TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1950 1957

No. 401- 18

CITY OF DETROIT, a Michigan Municipal Corporation, and COUNTY OF WAYNE, a Michigan Constitutional Body Corporate, APPELLANTS,

VS.

THE MURRAY CORPORATION OF AMERICA, a Delaware Corporation and THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 563 36.

CITY OF DETROIT, a Michigan Municipal Corporation, and COUNTY OF WAYNE, a Michigan Constitutional Body Corporate, PETITIONERS,

VS.

THE MURRAY CORPORATION OF AMERICA, a Delaware Corporation, and THE UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT.

NO. 401 FILED SEPTEMBER 10, 1956

NO. 401 — JURISDICTION POSTPONED JANUARY 14, 1957

NO. 563 PETITION FOR CERTIORARI FILED NOVEMBER 13, 1956

NO. 563 — CERTIORARI GRANTED JANUARY 14, 1957

IN THE

United States Court of Appeals for the Sixth Circuit

CITY OF DETROIT,

a Michigan Municipal Corporation,

and

COUNTY OF WAYNE,

a Michigan Constitutional Body Corporate,

Appellants and Defendants,

THE MURRAY CORPORATION OF AMERICA,
a Delaware Corporation,
Appellee and Plaintiff,
and
UNITED STATES OF AMERICA,
Intervenor

JOINT APPENDIX

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United States Court of Appeals for the Sixth Circuit

No. 12,678

CITY OF DETROIT, a Michigan Municipal Corporation,

and

COUNTY OF WAYNE,

a Michigan Constitutional Body Corporate, Appellants and Defendants,

VS.

THE MURRAY CORPORATION OF AMERICA,

a Delaware Corporation, Appellee and Plaintiff, and

UNITED STATES OF AMERICA, Intervenor

JOINT APPENDIX

(For List of Counsel see inside front cover)

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UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

CITY OF DETROIT, a Michigan municipal corporation, and COUNTY OF WAYNE, a Michigan

constitutional body corporate,

Appellants and Defendants,

THE MURRAY CORPORATION OF AMERICA, a Delaware corporation, Appellee and Plaintiff,

and UNITED STATES OF AMERICA, No. 12678.

JOINT APPENDIX

Intervenor.

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IN THE

DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Michigan Southern Division

THE MURRAY CORPORATION OF AMERICA, a Delaware corporation, Plaintiff,

ve

CITY OF DETROIT, a Michigan municipal corporation,

Defendant.

No. 12108:

COMPLAINT

(Filed September 9, 1952)

The Murray Corporation of America, a Delaware corporation, plaintiff herein, by Butzel, Eaman, Long, Gust & Kennedy, its attorneys, filing this Complaint as commencement of suit, says:

- 1. The Murray Corporation of America is and at all ti as referred to herein was a corporation organized and existing under and by virtue of the laws of the State of Delaware, is a citizen of the State of Delaware, and has its main plant, an office and place of business in the City of Detroit in the County of Wayne and said State within the Eastern District of Michigan, Southern Division, and the City of Detroit is a municipal corporation of the State of Michigan organized under and by virtue of the laws of said State, is a citizen of the State of Michigan, and resides, conducts its business in, and has its principal office and place of business in the City of Detroit, in the County of Wayne, State of Michigan, within the aforesaid Eastern District of Michigan, southern Division. The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars.
 - 2. Jurisdiction is founded on
 - (a) Diversity of citizenship and amount, and

(b) On the existence of a Federal question and amount in controversy, a question arising under the Constitution of the United States, as more fully hereinafter appears.

Jurisdiction is founded on 28 United States Code, Sections 1331 and 1332, respectively.

- 3. The assessed valuation placed upon the personal property of this plaintiff by the Board of Assessors of the City of Detroit, and the Common Council of the City of Detroit for the purposes of the ad valorem tax on the personal property of this plaintiff for the year 1952, is the sum of \$12,183,180.00. The total amount of taxes levied by the City of Detroit upon such personal property for the year 1952 is the sum of \$403,677.48, and payment of one-half thereof, namely, \$201,838.74 was made by your plaintiff to the Detroit City Treasurer on the 12th day of August, 1952. Such payment was made under protest and was accompanied by a written protest, a copy of which is hereto attached and marked Exhibit A.
- 4. Included in the personal property so assessed is property which on assessment day and at all times since belonged and now belongs to the United States, having an assessed value of \$2,145,400.00, which by virtue of the Constitution and laws of the United States is not subject to taxation by the State of Michigan, the City of Detroit, or by any municipal corporation of the State of Michigan.
 - 5. All of such property of the United States consisted of parts, materials, inventories, work in process and non-durable tools for use by plaintiff under subcontracts with prime contractors described hereinbelow for the use and benefit of and ownership by the United States Air Force. All of such property on assessment date was clearly identified as property of the United States either by labels or tags or by segregation in separate storage space. In some cases certain tools were too small or fragile to be marked or labeled, but all such tools were easily identifiable as property of the United States by the fact that they could be used only for the manufacture of products under sub-

contracts for the use and benefit of and ownership by the United States Air Force.

6. Title to all such personal property was vested in the United States under subcontracts of plaintiff with prime contractors for the United States Air Force by virtue of

Sub-Contract with Kaiser Frazer Corporation as. Prime Contractor for United States Air Force upder Contract No. AF 33(038)-18481, and

Sub-Contract with Wright Aeronautical Corporation Division of Curtiss Wright Corporation as Prime Contractor for United States Air Force under Contract No. AF 33(038)-18132.

The clauses of these contracts which vested such title in the United States are as follows:

"Upon the making of any partial payment under this contract, title to all parts, materials, inventories, work-in-process and non-durable tools theretofore acquired or produced by the Contractor for the performance of this contract, and properly chargeable thereto under sound accounting practice, shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor for the performance of this contract and properly chargeable thereto as aforesaid shall vest in the Government forthwith upon said acquisition or production: Provided, that nothing herein shall deprive the Contractor of any further partial or final payments due or to become due hereunder; or relieve the Contractor or the Government of any of their respective rights or obligations under this contract."

Plaintiff requested and received partial payments under both of the above described subcontracts prior to December 31, 1951, vesting title in the United States in all of the aforesaid personal property acquired by it pursuant to and under said subcontracts prior to the assessment date of the defendant, City of Detroit, to wit, January 1, 1952, upon which its assessment is based.

- 7. Plaintiff alleges that the assessment is made upon or with respect to property of the United States as hereinbefore mentioned which is immune under the Constitution of the United States from taxation by the State of Michigan or any subdivision thereof, either to plaintiff or to the United States.
- 8. Plaintiff alleges further that if the laws of Michigan or the Ordinances of the City of Detroit properly construed and applied, purport to authorize the assessment and taxation of such property belonging to the United States, such laws are in violation of and are repugnant to the Constitution of the United States and are therefore invalid.
 - 9. Plaintiff alleges further that the Board of Assessors and the Common Council of the City of Detroit by including such property belonging to the United States in the assessment of the property of plaintiff have applied the laws of the State of Michigan and the Ordinances of the City of Detroit in a manner which render said laws invalid under the Constitution of the United States.
 - 10. If the said City of Detroit acting through its Assessors and Common Council had assessed the personal property of plaintiff in a proper and legal manner, the correct assessed value of its personal property for the purposes of the ad valorem taxes of the City of Detroit and the County of Wayne and the State of Michigan for the year 1952 would have been the sum of \$10,037,780.00, instead of the total assessment as made by the Board of Assessors of the City of Detroit in the amount of \$12,183,180.00, which erroneously included property belonging to the United States of America, and not of the plaintiff, The Murray Corporation of America, in the amount of \$2,145,400.00.
- 11. The amount of said personal property tax attributable to said tax exempt property of the United States is the sum of \$71,085.68. The total value of the personal property of plaintiff subject to taxation by the City of Detroit for the year 1952 is as above stated no more than \$10,037,780.00. The total tax thereon should be no more than \$332,591.80 (instead of \$403,677.48 as erroneously and wrongfully levied and assessed) and one-half of said tax

should be no more than \$166,295,90 (instead of \$201,838.74 paid under protest as aforesaid).

12.—Plaintiff made timely complaint to the Board of Assessors of the City of Detroit against said assessment, and considering itself aggrieved by such assessment of said property and the decision of said Board of Assessors took timely appeal to the Honorable Common Council of the City of Detroit, and thereafter said assessment having been confirmed by said Common Council took timely appeal to the Michigan State Tax Commission, which denied said appeal in full.

· On August 15, 1952, plaintiff filed with the Common Council of the City of Detroit a claim for refund based on the same grounds as set forth in the protest (Exhibit A attached hereto) accompanied by an affidavit of claimant in accordance with the provisions of Sections 9 and 11 of: Title VI, Chapter VII of the Charter of the City of Detroit (1945); that plaintiff has not been advised that the Common Council has allowed or disallowed such claim; that this action is brought before the Common Council for the City of Detroit has acted upon said claim for refund for thereason that Section 53 of the General Property Tax Law. provides that if any person pays any tax under protest, specifying in writing the grounds of such protest, such person may "within thirty (30) days and not afterwards" sue the township for the amount paid and recover if the tax is shown to be illegal for the reasons shown in such protest.

- 13. Plaintiff alleges that the entire assessment of its personal property by the defendant, City of Detroit, for purposes of the 1952 ad valorem tax on said property is illegal and void, that the entire tax based thereon is illegal and void and plaintiff is entitled to recover from the defendant the entire amount of \$201,838.74 so as aforesaid paid by it to the defendant on the 12th day of August, 1952, together with interest thereon.
- 14. In the alternative, plaintiff alleges that the total amount of the valid tax on its personal property is as aforesaid no more than \$322,591.80, one-half of which sum is

\$166,295.90, and that it is entitled to recover from defendant the difference between the amount paid by it to defendant under protest on the 12th day of August, 1952, as aforesaid, namely, \$201,838.74, which is one-half of the amount of the tax erroneously assessed as aforesaid by defendant, and \$166,295.90, which is one-half of the maximum tax to which plaintiff can be subject, said difference being the sum of \$35,542.84, together with interest thereon.

Wherefore, plaintiff claims a judgment for \$350,000.00.

Butzel, Eaman, Long, Gust & Kennedy, Attorneys for Plaintiff, 1881 National Bank Building, Detroit 26, Michigan.

/Signed/ by Victor W. Klein, A Partner.

/Signed/ By J. B. Book, III, An Associate.

EXHIBIT A

Detroit, Michigan August 12, 1952

Charles N. Williams, Esq. Treasurer of the City of Detroit City Hall Detroit, Michigan

Dear Sir:

The Murray Corporation of America, a Delaware corporation, of Detroit, Michigan, having previously complained and protested to the Board of Assessors of the City of Detroit, and having appealed to the Common Council of the City of Detroit and to the Michigan State Tax Commission, considers itself aggrieved by the assessment of its personal property by the said Board of Assessors and the said Common Council and herewith makes

payment Under Protest of the first half of the Detroit General City Tax on its personal property, the amount so paid under protest being the sum of \$201,838.74, of the total amount of the tax \$403,677.48.

The reasons and grounds for such protest are as follows:

I. The said Board of Assessors have included in the personal property of The Murray Corporation of America subject to ad valorem taxes of the City of Detroit for the year 1952, property of the United States Government. Said property is wholly exempt from taxation by the City of Detroit, and was improperly and illegally included by the said Board of Assessors in the taxable personal property of The Murray Corporation of America for the year 1952. The nature of such property and the assessed valuation thereof is as follows:

| | Nature of Property | As | sessed | Valua | tio |
|-----|---|----|--------|---------------------------|-----|
| ÷ | Raw Material purchased Tooling for contracts In-process inventory | • | 1,2 | 289,970 227,250 | |
| | Unbilled shipments | | \$ 2,7 | $01,730 \\ \hline 12,180$ | , |
| Les | s:. Estimated cost of deliveries | S | | 45,400 | |
| | | | φ 4,1 | 10,100 | |

All of said property is exempt from taxation by the City of Detroit by virtue of the Constitution and laws of the United States, and by virtue of the Constitution and laws of the State of Michigan.

The amount of the said personal property tax of The Murray Corporation of America attributable to said property of the United States is the sum of \$71,085.68.

II. Included in the gross total of the personal property so assessed to this taxpayer at the value of \$12,183,180 is certain property designated as "Inventory." This is more particularly described in the form of "Corporation Personal Property Report" which the City of Detroit required this taxpayer to fill out and file as "Inventory, All Goods, Wares, Merchandise, Raw Materials, Work-in-Process, and Finished Goods (inventory to include cost of materials, manufacturing labor and burden—Schedule #2)". Said inventory was assessed at \$5,908,869, which sum is included in the \$12,183,180 which, as stated above, is the total assessment of the personal property of this taxpayer as figured by the City of Detroit for tax purposes for the year 1952.

The assessed valuation of said inventory is made up as follows:

| Property of The Murray Corporatio | n | | • |
|--------------------------------------|---|----|-----------|
| of America | | \$ | 3,763,469 |
| Property of the United States under: | | | |
| contracts with the Air Force | | | 2,145,400 |
| | | - | |

\$-5,908,869

Such assessment is illegal and incorrect not only because all taxable property of the United States Government was included therein but also because such assessed valuation of said inventory is higher relative to its true cash value than the assessed valuation of other types of property in the City of Detroit owned by other taxpayers. Real property in the Civ of Detroit and, in particular, real property used for residential purposes is at the same time assessed by the City of Detroit through its assessing agencies, at valuations much lower relative to the true cash value of the property involved than the valuation so as aforesaid placed upon the said inventory, of this taxpayer. If the portion of said inventory owned by the United States Government and subject to taxation by the City of Detroit had been assessed at the same value with respect to its true cash value as other property in the City of Detroit, the assessment of the portion of the inventories belonging to the United States would have been placed at the value of \$1,135,000, which is \$1,010,400 less than the said assessment placed thereon by the City of Detroit, namely, \$2,145,400.

III. If the Board of Assessors had assessed the personal property of this taxpayer in a proper and legal manner, the correct assessed value of its personal property for the purposes of the ad valorem taxes of the City of Detroit for 1952 would have been the sum of \$10,037,780 or thereabouts which is ascertained as follows:

| . Total assessmen | | | |
|-------------------|-------------|-----------------|------------------|
| of Assessors | | | \$ 12,183,180.00 |
| Less United Sta | ites proper | rty included in | |
| assessment | | | 2,145,400.00 |
| | | | |

Balance \$ 10,037,780.00

The total value of the personal property of The Murray Corporation of America subject to personal property taxes of the City of Detroit for the year 1952 is no more than \$10,037,780:00 and the tax thereon should be no more than \$332,591.80 (instead of \$403,677.48 as levied and assessed), and one-half of said tax should be no more than \$166,295.90 (instead of \$201,838.74, herewith paid under protest).

Because of such errors in the assessment of said personal property of The Murray Corporation of America, the entire tax levied thereon by the City of Detroit for the year 1952 is illegal and void.

Very truly yours,

The Murray Corporation of America.

By C. D. Widman (sgd)

Its Secretary and Treasurer.

IN THE

DISTRICT COURT OF THE UNITED STATES For the Eastern District of Michigan Southern Division

THE MURRAY CORPORATION OF AMERICA, a Delaware corporation, Plaintiff.

CITY OF DETROIT, a Michigan municipal corporation, Defendant. Civil Action No. 12108.

STIPULATION WITH RESPECT TO DEFENDANT'S MOTION FOR DEMAND OF CONTRACT DOCUMENTS AND FOR BILL OF PARTICULARS

(Filed November 17, 1952)

It is hereby stipulated between the parties hereto, by their yespective counsel, with respect to defendant's motion for demand of contract documents and for bill of particulars, dated October 13, 1952, as follows:

- The contract documents and other factual material demanded by defendant in paragraphs 1, 2 and 3, have been delivered to defendant by plaintiff.
- 2. For the purpose of the trial of the above entitled cause only, paragraph 13 of the complaint therein is modified so as to refer only to the property covered by all of the preceding paragraphs in said complaint; and further, that paragraph 4 of defendant's motion for demand of contract documents and for bill of particulars be and it hereby is withdrawn. There is reserved, however, to plaintiff all other claims with respect to the validity of its 1952 City of Detroit personal property assessment, which claims, however, will not be presented in the above entitled cause.

3. Defendant shall have a further period of fifteen days from and after the date of this stipulation within which to answer or otherwise plead in the above entitled matter.

Butzel, Eaman, Long, Gust & Kennedy, By (Sgd) Victor W. Klein, a Partner, By (Sgd) J. B. Book III, an Associate, Attorneys for The Murray Corporation of America.

(Sgd) Paul T. Dwyer, Corporation Counsel,

(Sgd) John G. Dunn, Assistant Corporation Counsel,
Attorneys for Defendant, City, of Detroit.

Dated: November 14, 1952

IN THE

For the Eastern District of Michigan Southern Division

THE MURRAY CORPORATION OF AMERICA, a Delaware corporation, Plaintiff,

CITY OF DETROIT, a Michigan municipal corporation,

Defendant.

Civil Action No. 12108

DEFENDANT'S ANSWER AND DEFENSES

(Filed January 15, 1953)

The defendant says:

1 and 2. Answering paragraphs one and two, defendant admits the allegations therein.

- 3. Defendant admits the allegations in paragraph three except this that defendant denies the sufficiency of the reasons and grounds contained in the written protest, Exhibit A.
- 4. Answering paragraph four, defendant denies each and every allegation and conclusion, both legal and factual, in said paragraph contained.
- 5. Answering paragraph five, defendant admits the physical character of the property as described but denies that ownership of the property was in the United States Air Force or the United States on January 1, 1952, assessment day under the laws of Michigan. Defendant has no knowledge of the evidentiary allegations as to labels, tags or segregation of the property, if said allegations be material. Defendant neither admits nor denies the allegations as to eventual use of the property but defendant denies that ownership of the property was in the United States or in the United States Air Force on assessment day 1952.
- 6. Defendant is informed and believes that partial payments were made prior to assessment date. January 1, 1952, as in Exhibit 1 attached to this answer, but defendant denies the conclusion that the partial payments made on the said sub-contracts prior to or on assessment day or the contracts themselves vest title on assessment day in the United States or in the Air Force to any of the property described in paragraph five of the complaint.
- 7. Defendant denies the allegations and conclusions in paragraph seven.
- 8. Defendant denies that the laws of Michigan and the ordinances of the City of Detroit purport to assess as alleged and defendant denies that thereunder it has assessed or taxed any government property and denies that the said property belonged to the United States on assessment day. For further answer defendant says the State tax laws are valid under the Constitution of the State of Michigan and have been properly construed in this assessment and defendant denies that the said laws are repugnant to or in violation of provisions of the Constitution of the United States.

- 9. Defendant denies that the said property belonged to the United States on assessment day and denies that the laws of the State of Michigan and the ordinances of the City of Detroit have been applied in a manner which renders them invalid under the Constitution of the United States.
- 10. Defendant denies the allegations, premises and conclusions in this paragraph contained and denies there is any illegality or error in the assessment against the plaintiff and says the assessed valuation of \$12,183,180 as pleaded in paragraph three of the complaint is correct, lawful and valid.
- 11. Defendant denies the allegations in paragraph eleven.
- 12. Defendant admits the allegations in paragraph twelve except this that it denies the reasons and grounds of protest set forth in Exhibit A attached to the complaint, and says further that the protest is insufficient in law. Defendant denies that the plaintiff is entitled to a refund based on the said protest or for any other reason.
- 13. Defendant denies each and every allegation and conclusion in paragraph thirteen contained and denies plaintiff is entitled to recover the sum of \$201,838.74 or any part of said sum with interest from August 12, 1952, or any other date.
- 14. Defendant denies each and every allegation in paragraph fourteen contained and denies that plaintiff is entitled to recover the sum of \$35,542.84 or any part of said sum with interest from August 12, 1952 or any other date.

Defendant denies each and every other allegation in the complaint not herein admitted, controverted or specifically denied and says plaintiff is not entitled to a judgment in the sum of \$350,000 or any other sum and moves that the complaint be dispussed with costs.

DEFENSES

For first separate and distinct defenses, defendant says:

COUNT I

- 1. The complaint fails to state a claim against defendant upon which relief can be granted.
- 2. Neither said contracts nor the Federal statutes confer constitutional immunity upon the plaintiff from non discriminatory State taxation for plaintiff's private benefit.
 - 3. The provisions in both sub-contracts for the immediate vesting of title on partial payments in either the Air Force or the United States or both are not in harmony with the Federal Procurement Statutes and are a nullity under said statutes.
 - 4. Title to and possession of the property remained in plaintiff or its prime contractors on tax day 1952 subject only to the paramount lien of the United States for security and solely to the extent that partial payments were made prior to tax day and the State secondary lien is valid.
 - 5. The non discriminatory assessment and tax are a valid lien upon plaintiff's legal and beneficial use, profit, possession and control, subject only to the superior lien of the United States and the inferior lien having been paid voluntarily capnot be recovered.
- 6. There is no tax laid under State or city law upon the sub-contracts, the United States Government, its property, its officers or its instrumentality; it is a non discriminatory State tax upon plaintiff as the owner or person in possession.

For second separate and distinct defenses, defendant says:

COUNT II

- 1. The complaint fails to state a claim against defendant upon which relief can be granted.
- 2. Neither said contracts nor the Federal statutes confer constitutional immunity upon plaintiff from non discriminatory State taxation for plaintiff's private benefit.
- 3. If title vests as between plaintiff and others it vests only to the extent of partial or advance payments made prior to tax day and title would vest not in the United States but in the prime contractors or their assignces who advanced the payments.
- 4. If the Government has any trace of title on tax day, which is denied, it is by virtue of partial payments only, is a naked title for adequate security purposes and the interest of the United States is secured solely to the extent plaintiff received such partial payments from the prime contractors or their assignees prior to fax day. The extent of such ownership or title is a question of computation to be determined as per Exhibits 1 and 2 attached:
- 5. Defendant is informed and believes that partial or advance payments are interest bearing credit loans to plaintiff against its costs made by the prime contractors or assignees and said advance payments are made subject to renegotiation.
- 6. On the title fiction and under both State and Federal law plaintiff is taxable for all property upon which partial payments were not made on tax day.

For third separate and distinct defenses, defendant, says:

· Count III

1. Plaintiff is estopped to deny that the said contracts expressly repudiate any contract obligation between the United States Government and the Air Force or either of them and the plaintiff.

2. Plaintiff is estopped to deny that the contracts expressly require plaintiff to comply with local and State laws without limitation:

Defendant therefore asks that the complaint be dismissed with costs.

City of Detroit, a Municipal Corporation, Defendant,

By Paul T. Dwyer, Corporation Counsel,

By John G. Dunn,
Assistant Corporation Counsel,
Attorneys for said Defendant,
301 City Hall,
Detroit 26, Michigan,

Dated: January 14, 1953.

. EXHIBIT 1

THE MURRAY CORPORATION OF AMERICA STATUS OF PARTIAL PAYMENT REQUESTS as of December 31, 1951

| Partial Payment Invoice Number | Date Presented (| Amount . | Date Paid |
|-----------------------------------|---------------------|--------------|-----------|
| C-119 CONTRA | CT-KAISER MAN | UFACTURING | COMPANY |
| . 1 | | \$ 23,203.13 | |
| . 2 | 9-21-51 | 95,924.46 | |
| 3 | 10-24-51 | 44,821.61 | 12-31-51 |
| 4 | 12-10-51 | 301,239.90 | |
| . 3 | 12-20-51 | 267,971.19 | |
| | | \$733,160.29 | |
| Additional costs | s to December. | | |
| | ded in partial ests | 676,308 | |
| Total Costs | | \$1,409,468 | |
| | | | |
| J | -65WRIGHT AEI | RONAUTICAL | |
| . 1 . | 10-30-51 | \$371,420.38 | 12-31-51 |
| 2 | 12-6-51 | 139,407.29 | 12-31-51 |
| 1. | | \$510,827.67 | |
| Additional cost | | | |
| 31, not inclu | | | |
| payment requ | ests | 1,657,049 | |
| Total Costs | | \$2,167,876 | |
| | | | * |
| | | .5 | |

M. I. Sammon

EXHIBIT 2

CITY OF DETROIT

BOARD OF ASSESSORS Water Board Building

Detroit 26, Michigan

MURRAY CORPORATION-1952

| Kaiser Mfg. Co. C-119 Contract | |
|--|--|
| Total Cost | \$1,409,468. |
| Partial Payments Received prior to January 1, 1952 % of Partial Payments Received to Total Cost Partial Payments Presented prior to January 1, 1952 % of Partial Payments Received to Partial Payments Presented | 163,949. 11.63% 733,160. 22.36% |
| Wright Aeronautical J-65 Contract . Total Cost | \$2,167,876. |
| Partial Payments Received prior to January 1, 1952 % of Partial Payments Received to Total Cost Partial Payments Presented prior to January 1, 1952 % of Partial Payments Received to Partial Payments Presented | 510,827. 23.56% 510,827. |

| Kaiser Mfg. Co. and Wright Aeronautical-Com | bined . |
|--|--------------|
| Total Cost | \$3,577,344. |
| Partial Payments Received prior to December | |
| 31, 1951/ | 119,127. |
| Partial Payments Received on December 31, | |
| 1951 | 555,649. |
| % of Partial Payments Received prior to Decy | |
| - 31, 1951 to Total Cost | A 3.33% |
| % of Partial Payments Received on Dec. 31, | |
| 1951 to Total Cost | 15.53% |
| % of Partial Payments Received prior to Jan. | |
| 1, 1952 to Total Cost | 18.86% |
| Partial Payments Presented prior to Jan. 1, | |
| 1952 | 1,243,987. |
| % of Partial Payments Presented to Total | |
| Cost | 34.77% |
| | |

Prepared at the request of the Board of Assessors—City of. Detroit.

/Signed/ O. Duchene

O. Duchene

Head Accountant

November 26, 1952

"The Complaint and Answer filed in Civil Action No. 12482, instituted against the City of Detroit to recover the second-half of the 1952 City tax, paid under protest, has been omitted from the Joint Appendix for the reason that said Complaint and Answer are in all material respects identical to the Complaint (3) and Answer (13) filed in Civil Action No. 12108.

The Complaint in Civil Action No. 12483, instituted against the County of Wayne to recover the 1952 County tax, paid under protest, has been omitted from the Joint Appendix for the reason that said Complaint is substantially identical to the Complaint filed in Civil Action No. 12108 (3) except for the amount sought to be recovered; which appears in Stipulation No. 1, paragraph 8 (84)."

IN THE

DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Michigan Southern Division

THE MURRAY CORPORATION OF AMERICA, a Delaware corporation, Plaintiff,

Civil Action No. 12483.

COUNTY OF WAYNE, a Michigan constitutional body corporate,

Defendant.

ANSWER OF DEFENDANT TO PLAINTIFF'S COMPLAINT AND AFFIRMATIVE DEFENSES

(Filed March 26, 1953)

Now comes the County of Wayne, a Michigan constitutional body corporate, by its attorneys, Gerald K. O'Brien, Prosecuting Attorney, Hobart Taylor, Jr. and Philip A. McHugh, Assistant Prosecuting Attorneys, and for answer to plaintiff's complaint, as heretofore filed in this cause, says:

1. Defendant admits as to the allegations contained in paragraph '1' of said complaint, that The Murray Corporation of America is, and at all times referred to herein, was a corporation organized and existing under and by virtue of the laws of the State of Delaware, is a citizen of the State of Delaware, and has its main plant, and office and place of business in the City of Defroit, in the County of Wayne and State of Michigan, within the Eastern District of Michigan, Southern Division of this court, and that the County of Wayne is a body corporate of the State of Michigan, organized under and by virtue of the Constitution of said State, is a citizen of the State of Michigan, and resides, conducts its business in, and has its principal office and place of business in the County of Wayne, Michigan, within the aforesaid Eastern

District of Michigan, Southern Division, and defendant likewise admits that the matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand (\$3,000.00) Dollars.

- 2. Defendant-admits, as to the allegations contained in the second paragraph of plaintiff's said complaint, that jurisdiction in this case is founded on diversity of citizenship and amount; and the existence of a federal question and amount in controversy, a question arising under the Constitution of the United States; as more fully appears in plaintiff's said complaint, and that jurisdiction is founded on 28 United States Code, Secs. 1331 and 1332, respectively.
- 3. Defendant admits, as to the allegations contained in paragraph "3" of said complaint, that the assessed valnation placed upon the personal property of plaintiff by the Board of Assessors of the City of Detroit and the Common Council of the City of Detroit for the purposes of the ad valorem tax on the personal property of plaintiff for the year 1952, which assessment has heretofore been adopted by the County of Wayne for the purpose of. preparing its 1952 tax foll, is the sum of \$74,950.92, and that payment thereof was made by plaintiff to the Treasurer of the County of Wayne on the 15th day of January, 1953, and that such payment was made under protest and was accompanied by a written protest, a copy of which is attached to plaintiff's complaint and marked Exhibit "A", but defendant denies the sufficiency of the reasons and grounds contained in the said written protest, Exhibit " A".
- 4. Defendant denies that included in the personal property so assessed is property which on assessment day and at all times since, belonged to, or now belongs to, the United States; having an assessed value of \$2,145,400,00, which, by virtue of the Constitution and laws of the United States is not subject to taxation by the State of Michigan, or by any municipal corporation or constitutional body corporate of the State of Michigan, said defendant denying each and every allegation and conclusion, both legal and factual, in said paragraph '4" contained.

6. Defendant, as to the allegations contained in paragraph "6" of plaintiff's said complaint, denies that all such personal property, or any part thereof, was vested in the United States under sub-contracts of plaintiff with prime contractors for the United States Air Force, by virtue of a sub-contract with Kaiser-Frazer Corporation as prime contractor for the United States Air Force under contract No. AF 33(038)-18481, or by virtue of a subcontract with Wright Aeronautical Corporation Division of Cartiss-Wright Corporation as primate contractor for United States Air Force under contract No. AF 33(038)-18132, and likewise denies, upon information and belief, that plaintiff requested and received partial payments under both of said last mentioned sub-contracts on or prior to December 31, 1951, vesting thereby title in the United States in all of the aforesaid personal property acquired by it pursuant to and under said sub-contracts prior to the assessment date of this defendant, namely, January 1, 1952, upon which defendant's assessment is based, and defendant likewise denies plaintiff's said conclusions with reference to said partial payments.

- of plaintiff's said complaint, defendant denies that said assessment was made upon or with respect to property of the United States which was, or is, im nune under the Constitution of the United States from taxation by the State of Michigan or any subdivision thereof, either to plaintiff or to the United States; and defendant likewise denies plaintiff's conclusions with reference thereto.
- S. Defendant denies that the laws of Michigan authorizing the making of said assessment are in violation of and are repugnant to the Constitution of the United States and are therefore invalid; and defendant likewise denies that it has assessed or taxed any government property, and denies that the said property belonged to the United States on assessment day and avers that the tax laws of Michigan are valid under the Constitution of the State of Michigan, and were properly construed and applied as to said plaintiff.
- 9. As to the allegations contained in paragraph *9" of plaintiff's said complaint, defendant denies that the Board of Assessors and the Common Council of the City of Detroit illegally included such property belonging to the United States in the assessment of the personal property of plaintiff, and defendant likewise denies that the laws of Michigan were applied to plaintiff's assessment in a manner which renders said laws invalid under the Constitution of the United States.
- 10. Defendant denies, as to the allegations contained in paragraph "10", that had the Board of Assessors and the Common Council of the City of Detroit assessed the personal property of plaintiff in a proper and legal manner, that the correct assessed value of plaintiff's personal property for the purposes of the ad valorem taxes of the City of Detroit and the County of Wayne and the State of Michigan for the year 1952 would have been the sum of \$10,037,780.00, instead of a total assessment in the amount of \$12,183,180.00, which said last stated sum was heretofore adopted by the County of Wayne for the purpose of preparing its 1952 tax roll, and defendant likewise denies

that said sum erroneously included property belonging to the United States of America, in the amount of \$2,145,400.00, and defendant avers that said tax assessment against plaintiff is correct, lawful and valid.

- 11. As to the allegations contained in paragraph "11" of plaintiff's said complaint, defendant denies that the amount of the County of Wayne 1952 personal property tax was assessed against tax-exempt property of the United States in the sum of \$13,198.50; likewise denies that the total value of the personal property of plaintiff subject to taxation by the County of Wayne for the year is no more than \$10,037,780.00, and likewise denies that the total tax thereon to plaintiff should be no more than \$61,752.42 instead of \$74,950.92.
- 12. Defendant, as to the allegations contained in paragraph "12" of plaintiff's said complaint, admits that plaintiff made timely complaint to the Board of Assessors. of the City of Detroit against the assessment so made against plaintiff, and thereafter took a timely appeal from the decisions of the assessors to the Honorable Common, Council of the City of Detroit, and that thereafter the said assessment was confirmed by the said Common Council, and that thereupon plaintiff took a timely appeal to the Michigan State Tax Commission, which Commission denied plaintiff's said appeal, but defendant denies that the reasons and grounds of protest, as set forth in Exhibit "A" attached to its complaint in this cause were, or are, legally sufficient in law, and that therefore said plaintiff is not entitled to receive a refund from the Wayne County Board of Auditors based on the said grounds as set forth in said Exhibit "A", or based upon any other reason or ground whatsoever.
- 13. As to the allegations contained in paragraph "13" of plaintiff's said complaint, defendant denies that the total amount of the tax on plaintiff's personal property is no more than \$61,752.42, and likewise denies that said plaintiff is entitled to recover from defendant the difference between the amount paid by it to defendant under protest on January 15, 1953, namely, \$74,950.92 and the

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said amount of \$61,752.42, which said difference is the sum of \$13,198.50, together with interest thereon, nor is said plaintiff entitled to recover from defendant any sum or sums whatsoever by virtue of, or arising out of, the making of the aforesaid assessment against plaintiff, and defendant likewise denies each and every other allegation in plaintiff's complaint not hereinbefore admitted, controverted or specifically denied, and moves that plaintiff's said complaint be dismissed, with costs.

AFFIRMATIVE DEFENSES

For a first separate and distinct defense to plaintiff's right of action, defendant says:

COUNT I

- 1. Plaintiff's complaint fails to state a claim against defendant upon which relief can be granted.
- 2. Neither said contracts nor the federal statutes confer constitutional immunity upon plaintiff from non-discriminatory state taxation for plaintiff's private benefit.
- 3. The provisions in both sub-contracts for the immediate vesting of title on partial payments in either the United States Air Force or the United States, or both, are not in harmony with the Federal Procurement Statutes and are a nullity under said statutes.
- 4. Title to and possession of the property remained in plaintiff or its prime contractors on tax day, 1952, subject only to the paramount lien of the United States for security and solely to the extent that partial payments were made prior to tax day, 1952, and the state secondary-lien is valid.
- 5. That non-discriminatory assessment and tax are a valid lien upon plaintiff's legal and beneficial use, profit, possession and control, subject only to the superior lien of the United States, and the inferior lien having been paid voluntarily, cannot be recovered.

6. There is no tax under state or city law upon the sub-contracts, the United States government, its propert, its officers or its instrumentality; it is a non-discriminatory state tax upon plaintiff as the owner or person in possession.

For a second separate and distinct defense, defendant says:

COUNT II.

- 1. The complaint of plaintiff fails to state a claim against defendant upon which relief can be granted.
 - 2. Neither said contracts nor the federal statutes confer constitutional immunity upon plaintiff from nondiscriminatory state taxation for plaintiff's private benefit.
 - 3. If title vests as between plaintiff and others, it vests only to the extent of partial or advance payments made prior to tax day, and title would vest not in the United States but in the prime contractors or their assignees who advanced the payments.
- 4. If the government had any trace of title on tax day,—which is denied—it is by virtue of partial payments only, and is a naked title for adequate security purposes, and the interest of the United States is secured solely to the extent plaintiff received such partial payments from the prime contractors or their assignees prior to tax day.
 - 5. Defendant is informed and believes that partial or advance payments are interest bearing credit loans to plaintiff against its costs made by the prime contractors or assignees, and said advance payments are made subject to re-negotiation.
 - 6. On the title fiction, and under both state and federal law, plaintiff is taxable for all property upon which partial payments were not made on tax day.

For a third separate and distinct defense, defendant says:

COUNT III

- 1: Plaintiff is estopped to deny that the said contracts expressly repudiate any contract obligation between the United States government and the Air Force, or either of them.
- 2. Plaintiff is estopped to deny that the contracts expressly require plaintiff to comply with local and state laws without limitation.

Defendant therefore asks that plaintiff's complaint be dismissed, with costs.

Gerald K. O'Brien,
Prosecuting Attorney,
Hobart Taylor, Jr. and
Philip A. McHugh,
Assistant Prosecuting Attorneys,

By Philip A. McHugh,
Assistant Prosecuting Attorney,
Attorneys for Defendant,
508 Wayne County Building,
Detroit 26, Michigan.

Dated: March 24, 1953

IN-THE

DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Michigan Southern Division

THE MURRAY CORPORATION OF AMERICA, a Delaware corporation, Plaintiff,

CITY OF DETROIT, a Michigan mu-

Defendant.

REQUEST FOR ADMISSIONS

(Filed January 28, 1953)

To:
Butzel, Eaman, Long, Gust & Kennedy
Attorneys at Law
1881 National Bank Building
Detroit 26, Michigan

Sirs:

Defendant, City of Detroit, a municipal corporation under the laws of the State of Michigan, requests plaintiff, under Rule 36 and within ten (10) days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

That each of the following relevant matters of fact is true under Contract No. AF 33(038)-18481 and Contract No. AF 33(038)-18132:

4. That partial or advance payments are credit loans to plaintiff against plaintiff's costs made by the prime contractors or their assignees;

- 2. That the loans are interest bearing loans;
- 3. That the advance payments are made subject to renegotiation;
- 4. That neither the United States Government nor the United States Air Force has executed contracts with plaintiff.

Dated: January 28, 1953

City of Detroit, a municipal corporation, Defendant,
By Paul T. Dwyer,
Corporation Counsel,
By John G. Dunn,
Assistant Corporation Counsel,
Attorneys for said Defendant,
301 City Hall,
Detroit 26, Michigan.

IN THE

DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Michigan Southern Division

THE MURRAY CORPORATION OF AMERICA, a Delaware corporation, Plaintiff,

VS.

CITY OF DETROIT, a Michigan municipal corporation,

Defendant.

Civil Action No. 12108.

STATEMENT OF PLAINTIFF DENYING MATTERS FOR WHICH DEFENDANT HAS REQUESTED ADMISSIONS UNDER RULE 36

(Filed March 16, 1953)

To:

Paul T. Dwyer,

Corporation Counsel, and

John G. Dunn,

Assistant Corporation Counsel,

Attorneys for Defendant, City of Detroit, 301 City Hall,

Detroit 26, Michigan.

Gentlemen:

In response to your Request for Admissions filed in the above entitled cause under date of January 28, 1953, plaintiff, The Murray Corporation of America, responds as follows:

(1) Plaintiff denies that any advance payments of any-kind or character whatsoever were made to it under either Prime Contract No. AF 33(038)-18481 or Prime Contract No. AF 33(038)-18132, or the subcontracts entered into with the plaintiff thereunder.

Plaintiff further denies that the partial payments made to it under said subcontracts and as alleged in its Complaint in the above entitled action were credit loans to plaintiff or were coans of any kind or character whatsoever to plaintiff against plaintiff's costs made by the prime contractors or their assignees, but says that such payments were partial payments upon and for property acquired or produced by plaintiff in the performance of said subcontracts entered into with Prime Contractors subject to and under Prime Contracts for the benefit and account of the United States Government.

- (2) Plaintiff denies that such partial payments as were made to it were loans and denies that any interest whatso-ever was paid or is payable thereupon.
- (3) Plaintiff denies that there are or were any advance payments made under said subcontracts, and denies that any provision is contained in said subcontracts for the making of advance payments.

Further responding, plaintiff denies that the partial payments made to it were or are subject to renegotiation.

- (4) Plaintiff denies that neither the United States Government nor the United States Air Force has executed contracts with plaintiff and shows that:
 - (a) Kaiser-Frazer Corporation was a Prime Contractor of the United States Government under Prime Contract No. AF 33(038)-18481, which Contract, with the written approval of the United States Government, subsequently was transferred and assigned by Kaiser-Frazer Corporation to Kaiser Manufacturing Corporation, its wholly-owned subsidiary;
 - (b) Kaiser-Frazer Corporation entered into a subcontract with plaintiff "under your (Kaiser-Frazer Corporation's) Letter Contract AF 33(038)-18481 with the United States Government" whereby plaintiff undertook to perform a portion of the work called for by the above Prime Contract, and the same became a subcontract under said Prime Contract with the United States Government;

- (c) Wright Aeronautical Corporation as a prime contractor entered into a Prime Contract with the United States Government No. AF 33(038)-18132;
- (d) Wright Aeronautical Corporation entered into a subcontract with plaintiff "under your (Wright Aeronautical Corporation's) contract AF 33(038)-18132 with the United States Government" whereby plaintiff undertook to perform a portion of the work called for by said Prime Contract No. AF 33(038)-18132 and the same became a subcontract under said Prime Contract with the United States Government;
- (e) Each of the Prime Contracts with the United States Government referred to above contained provisions requiring the approval of the United States Government to the subcontracts made with plaintiff and pursuant to such requirements and the provisions of said subcontracts, the subcontracts were duly approved in writing by the United States Government, which approvals of the United States Government in writing were affixed to and upon the face of each of said subcontracts;
- (f) Under date of May 3, 1951, the United States of America and plaintiff entered into a Letter Contract No. AF 33(038)-24694 providing for the acquisition of facilities for the purpose of providing the facilities required by plaintiff in order to manufacture the articles called for under said subcontract between plaintiff and Kaiser;
- (g) Said Prime Contracts provide that partial payments may be made by the United States Government to said Prime Contractors upon and for property acquired or produced under and in the performance of said Prime Contracts, and also provide for the making of partial payments to Plaintiff subject to the express approval of the United States Government, subject to the requirement that such subcontracts contain a provision not less favorable to the Government than the standard Government form of

partial payments provision and subject to the further provision that the inclusion of such partial payments clause should have the approval of the United States Government in writing;

- (h) Pursuant to the foregoing, a partial payments clause was inserted in each of said subcontracts with plaintiff and were approved by the United States Government and in accordance with such partial payments clauses partial payments to plaintiff were approved by the Government and paid to plaintiff:
- (i) Said partial payments clauses provide that upon making any partial payment to plaintiff "title to all parts, materials, inventories, work in process and nondarable tools theretofore acquired or produced by the contractor for the performance of this contract * * * and title to all like property thereafter acquired or produced by the contractor for the performance of this contract * * * shall vest in the Government forthwith upon said acquisition or production";
- (j) Plaintiff received partial payments under both of said subcontracts prior to December 31, 1951, and pursuant to the provisions thereof title vested in the United States Government in all of the personal property upon which assessment was made by the defendant City of Detroit, which is here in controversy.

Butzel, Eaman Long, Gust & Kennedy, By Victor W. Klein, a Partner, Attorneys for Plaintiff, The Murray Corporation of America, 1881 National Bank Building, Detroit 26, Michigan. State of Michigan County of Wayne—ss.

On this 16th day of March, 1953, before me, a Notary Public in and for said County, personally appeared Mark Sammon, the Assistant Treasurer of The Murray Corporation of America, who being by me duly sworn says that he has read the foregoing Statement of Plaintiff Denying Matters for which Defendant has Requested Admissions Under Rule 36, that he knows the contents thereof, and that the same is true of his own knowledge, and that he is duly authorized to execute this acknowledgment for and on behalf of plaintiff, The Murray Corporation of America.

s/ Mark Sammon.

s/ Beatrice V. Cabanaw, Notary Public, Wayne County, Michigan. My commission expires February 10, 1957.

IN THE

DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Michigan Southern Division

THE MURRAY CORPORATION OF AMERICA, a Delaware corporation, Plaintiff,

VS.

CITY OF DETROIT, a Michigan municipal corporation,

Defendant.

THE MURRAY CORPORATION OF AMERICA, a Delaware corporation, Plaintiff,

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CITY OF DETROIT, a Michigan municipal corporation,

Defendant.

THE MURRAY CORPORATION OF AMERICA, a Delaware corporation, Plaintiff,

VS.

COUNTY OF WAYNE, a Michigan constitutional body corporate,

Defendant.

Civil Action No. 12108.

Civil Action No. 12482.

Civil Action No. 12483.

ORDER CONSOLIDATING ACTIONS FOR HEARING AND TRIAL

(Filed September 14, 1953)

The Stipulation for consolidation of the above entitled actions for hearing and trial having been entered by all parties to said actions;

It is ordered that the said actions be, and hereby are, consolidated for hearing and trial, and it is further ordered that henceforth from the date of this Order all papers relating to any of said consolidated actions shall be filed only in Civil Action No. 12108 and such filing shall

constitute filing in Civil Action No. 12482 and Civil Action No. 12483.

Thomas P. Thornton, United States District Judge.

Dated: Sept. 14, 1953

MOTION FOR SHMMARY JUDGMENT

(Filed January 8, 1954)

The Plaintiff, The Murray Corporation of America, by Butzel, Eaman, Long, Gus' & Kennedy, its attorneys, hereby moves this Honorable Court to enter summary judgment for the Plaintiff, in accordance with the previsions of Rule 56 of the Rules of Civil Procedure, on the ground that the pleadings and the affidavits of Mark I. Sammon, E. R. Jones and Nicholas Dykstra, hereto attached, and marked Exhibits A. B and C. respectively, show that no genuine issue exists as to any material fact and that Plaintiff is entitled to judgment as a matter of law.

The Murray Corporation of America, a
Delaware Corporation,
By its Attorneys:
Butzel, Eaman, Long, Gust & Kennedy,
1881 Jational Bank Building,
Detroit 26, Michigan,
By s/ Victor W. Klein, a Partner,
By s/ K. Douglas Mann, an Associate.

Dated: January 6, 1954 Detroit, Michigan

Motion for Summary Judgment Affidavit of Mark I, Sommon

EXHIBIT A

AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

State of Michigan County of Wayne—ss.

Mark I. Sammon, being first duly sworn, deposes and says:

I am the Assistant Treasurer of The Murray Corporation of America (hereinafter called "Murray"), plaintiff in the above entitled cause, and have personal knowledge of the facts herein set forth.

As the Assistant Treasurer of Murray, my duties and responsibilities include the custody, control and supervision of the general books of account maintained by Murray in the usual, ordinary and regular course of business, and specifically, the records maintained and kept by Murray relating to accounts receivable, including the records relating to the performance, status and operation of Murray's prime and subcontracts with the United States Government and the billings, collections of amounts owing and payments made to Murray by prime contractors of the United States Government or by the United States tiovernment itself. In connection with the duties herein above described. I am kept advised in the usual course of business of the performance, completion and operation of Murray's prime or subcontracts with the United States Government and its prime contractors, and of the deliveries, completions and payments made thereunder, and in connection with such matters concerning such contracts. I regularly deal-directly with the representatives of the United States Government and of its/prime contractors.

In addition, I also have the duty and responsibility of representing the interests of Murray in the conduct of any and all audits of Murray's general books of account by public accountants, tax unit auditors or Government.

auditors under contracts or subcontracts with the United States Government, and in connection with such audits it is my responsibility and duty to obtain and maintain all of the information which is essential to and required by such auditors in the conduct of their audits, and specifically, to obtain and maintain the information essential and required by the auditors of the City of Detroit and County of Wayne who are employed to audit the books of Murray and others in connection with the personal property taxes assessed by the City of Detroit and the County of Wayne.

I am 43 years old and have held my present duties and responsibilities with Murray for the past eight years. Prior to that I was employed by the Central Soya Company, Inc., at Fort Wayne, Indiana; Price, Waterhouse & Company at Chicago, Illinois and the Illinois Bell Telephone Company at Chicago, Illinois at which companies I performed duties similar or related to those which I presently perform for Murray. I am a graduate of Northwestern University School of Commerce and I have been a Certified Public Accountant since 1936. My experience in connection with accounting practices and procedures covers 25 years during which I was engaged by the aforementioned companies in various capacities.

This Affidavit is submitted in support of the Motion of Murray for summary judgment herein, for the purpose of showing that there is in this action no genuine issue as to any material fact, and that the plaintiff, Murray, is entitled to judgment as a matter of law.

Except where otherwise specifically designated herein-Exhibits mentioned in this Affidavit shall refer to the "Volume of Plaintiff's Exhibits" filed by plaintiff simultaneously herewith in support of its Motion for Summary Judgment, and any such reference shall incorporate herein and as a part hereof the Exhibit so mentioned as though the Exhibit itself was set forth herein in full.

(1) On March 23, 1951, Murray, having been advised by Kaiser Frazer Corporation and its subsidiary, Kaiser Manufacturing Corporation (hereinafter jointly or severally referred to as "Kaiser") that Kaiser was a prime contractor of the United States Government to manufacture certain types of aircraft for the United States Air Force under Prime Contract No. AF 33(038)-18481 (Exhibit 1), entered into a subcontract with Kaiser for the manufacture of certain parts and subassemblies, therein specified, which were required under said Prime Contract by and for the United States Air Force as a part of the current National Defense effort.

The aforesaid subcontract was amended by mutual agreement on August 15, 1951, and again on October 4, 1951. Exhibit 2-A is a photostatic copy of said subcontract, and Exhibits 2-B and 2-C are photostatic copies of said amendments, respectively.

Both the aforesaid subcontract and the amendments thereto were duly approved in writing on the signature pages thereof by a Contracting Officer of the United States Air Force as representative of the United States Government under and as required by the aforesaid Prime Contract AF 33(038)-18481 (Exhibit 1 at Page I, paragraph 5 of the original Prime Contract) in effect between the United States Government and Kaiser on January 1, 1952.

Said subcontract, in the form of Exhibit 2-A, B, C was in full force and effect on, prior and subsequent to January 1, 1952, the tax assessment date here in question, and provided for the making of partial (or progress) payments to Murray as the work covered by the subcontract progressed, said payments being provided for under paragraph 4 of the original subcontract of March 23, 1951, (Exhibit 2-A), as follows:

"It is understood that your Letter Contract with the Government (and the definitive contract to be executed pursuant thereto) will be amended so that there may be included in the Subcontract, and accordingly the subcontract will provide for, partial payments in substantially the same manner as provided in APR 5-407.2(1)* except that payments shall be 90% of cost instead of 75%. We agree to furnish to you such information and to allow you to conduct such audits as may be required by the Government under the provisions of said Article in respect of requests for partial payments. You agree subject to the provisions of such Article to make partial payments to us. It is further understood that as soon as your Letter Contract is so amended, requests for partial payments may be made by us in respect of costs incurred by us hereunder."

and under Paragraph 11, which was added to said original subcontract by amendment dated August 15, 1951 (Exhibit 2-B), as follows:

"Under the provision of Paragraph 4 of the Letter Agreement, provision was made for partial payments subject to the provisions of APR 5-407.2(1) as set forth below and subject to amendment of the Letter Contract to include such a provision for partial payments and inclusions of such a provision in the Definitive Contract with the Government.

This is to advise that the following paragraph has now been added to the Letter Contract with the Government:

"10. The Contractor shall be paid 90% of the costs incurred by reason of partial payments made from time to time by the Contractor to any subcontractor hereunder provided that the subcontract contains a partial payments clause not less favorable to the Government than the partial payments provision in JPR 5-407.2, and provided further that the inclusion of such partial payments clause shall have the prior approval of the Contracting Officer, Headquarters, Air-

^{*}Code of Federal Regulations, 1947 Supp., Title 10, Chapter VIII, Par. 805.407-2, a copy of which, for the convenience of the Court, has been included in the Volume of Plaintiff's Exhibits as Exhibit 3 and which is in substantially the same form as the clauses quoted immediately below from Paragraph 11 of the Kaiser subcontract.

Materiel Command, in writing. Each partial payment made on any subcontract hereunder shall be specifically approved in writing by the Contracting Officer.'

In accordance with the requirements of the above amendment to the Letter Contract with the Government, said Letter Agreement of March 23, 1951, is amended by adding thereto a new paragraph 11, reading as follows:

- "11. Partial payments—Partial payments, which are hereby defined as payments prior to delivery, on work in progress for the Government under this contract, may be made upon the following terms and conditions.
- "(a) The Contracting Officer may, from time to time, authorize partial payments to The Murray Corporation of America (hereinafter called "the Contractor") upon property acquired or produced by it for the performance of this contract: Provided, that such partial payments shall not exceed 90 percent of the cost to the Contractor of the property upon which payment is made, which cost shall be determined from evidence submitted by the Contractor and which must be such as is satisfactory to the Contracting Officer; Provided further, that in no event shall the total of unliquidated partial payments (see (c) below) and of unliquidated partial payments, if any, made under this contract, exceed 80 percent of the contract price of supplies still to be delivered.
- under this contract, title to all parts, materials, inventories, work in process and non-durable tools thereto-fore acquired or produced by the Contractor for the performance of this contract, and properly chargeable thereto under sound accounting practice, shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor for the performance of this contract and properly chargeable thereto as aforesaid shall vest in the Gov

ernment forthwith upon said acquisition or production: Provided, that nothing herein shall deprive the Contractor of any further partial or final payments due or to become due hereunder; or relieve the Contractor, Kaiser-Frazer Corporation, or the Government of any of their respective rights or obligations under this contract.

- "'(c) In making payment for the supplies furnished bereunder, there shall be deducted from the contract price-therefor a proportionate amount of the partial payments theretofore made to the Contractor, under the authority herein contained.
- It is recognized that property, (including, without limitation, completed supplies, spare parts, drawings, information, partially completed supplies, work in process, materials, fabricated parts and other things called for herein) title to which is or may hereafter become vested in the Government pursuant to this Article will from time to time be used by or put in the care, custody or possession of the Contractor in connection with the performance of this contract. The Contractor, either before or after receipt of notice of termination at the option of the Government, may acquire or dispose of property to which title is vested in the Government under this Article, upon terms approved by the Contracting Officer, provided, that, after receipt of notice of termination, any such property. that is a part of termination inventory may be acquired or disposed of only in accordance with the provisions of the termination article of this contract and applicable laws and regulations. The agreed frice (in case of acquisition by the contractor) or the proceeds received by the Contractor (in case of any other disposition), shall, to the extent that such price and proceeds do not exceed the unliquidated balance of partial payments hereunder, be paid or credited to the Government as the Contracting Officer shall direct; and such unliquidated balance shall be reduced accordingly. Current production scrap may be sold by the Contrac-

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tor without approval of the Contracting Officer but the proceeds will be applied as provided in this paragraph (d), provided that any such scrap which is a part of termination inventory may be sold only in accordance, with the provisions of the termination article of this contract and applicable laws and regulations. Upon liquidation of all partial payments hereunder or upon completion of deliveries called for by this contract, title to all property (or the proceeds thereof) which has not been delivered to and accepted by the Government under this contract or which has not been incorporated in supplies delivered to and accepted by the Government under this contract, and to which title has vested in the Government under this Article shall yest in the Contractor.

- bility for Government-furnished Property" and any other provision of this contract defining liability for Government-furnished property shall be inapplicable to property to which the Government shall have acquired title solely by virtue of the provisions of this Article. The provisions of this Article shall not relieve the Contractor from risk of loss or destruction of or damage to property to which title vests in the Government under the provisions hereof.
 - supplemented or amended) contains provision for Advance Payments, and in addition if at the time any partial payment is to be made to the Contractor under the provisions of this partial payments article any unliquidated balance of advance payments is outstanding, then notwithstanding any other provision of the Advance Payments Article of this contract the net amount, after appropriate deduction for liquidation of the Advance payment, of such partial payment shall be deposited in the special bank account or account maintained as required by the provisions of the Advance Payments Article, and shall thereafter be withdrawn only pursuant to such provisions."

(2). On April 19, 1951, Murray, having been advised by the Wright Aeronautical Corporation, now the Cultiss-Wright Corporation (hereinafter jointly or severally referred to as "Wright") that Wright was a prime contractor of the United States Government to manufacture certain types of aircraft for the United States Air Force under Prime Contract No. AF 33(038)-18132 (Exhibit 4), entered into a subcontract with Wright for the manufacture of certain parts and subassemblies, therein specified, which were required under said Prime Contract by and for the United States Air Force as a part of the current National Defense effort.

The aforesaid subcontract was amended by mutual agreement on May 24, 1951. Exhibit 5-A is a photostatic copy of said subcontract, and Exhibit 5-B is a photostatic copy of said amendment.

Both the aforesaid subcontract and the amendment thereto were duly approved in writing on the signature page thereof by a Contracting Officer of the United States Air Force, as representative of the United States Government and as required by the aforesaid Prime Contract No. AF 33(038) 18132 (Exhibit 4, at Page 1, Paragraph 5 of the original Prime Contract) in effect between the United States Government and Wrightson January 1, 1952. Said subcontract, in the form of Exhibit 5-A, B was in full force and effect on, prior and subsequent to January 1, 1952, the tax assessment date here in question, and provided for the making of partial (or progress) payments to Murray as the work covered by the subcontract progressed, said payments being provided for under Paragraph 5 of the original subcontract (Exhibit 5-A) as follows:

"It is understood that your contract with the Government will be amended forthwith so that there may be included in the subcontract, and accordingly the subcontract will provide for, partial payments of 75% of cost in substantially the same manner as provided

in ASPR5-407.2(1)*. We agree to furnish to you such information and to allow you to conduct such audits as may be required by the Government under the provisions of said Article in respect of requests for partial payments. You agree subject to the provisions of such Article to make partial payments to us. It is further understood that as soon as your contract is so amended, requests for partial payments may be made by us in respect of costs incurred by us here under.

Deponent was advised in the regular course of business that Prime Contract (AF33(038) 18132) (Exhibit 4) was amended on May 18, 1951, as agreed in the provision of said subcontract above quoted to provide for partial payments to Murray by Wright (See Exhibit 4, Amendment 4, Para, 2-F, Page 2).

(3) On August 10, 1951, September 21, 1951, October 24, 1951, December 10, 1951 and December 20, 1951, Murray forwarded formal written requests for partial (or progress) payments to Kazser in the amounts of \$23,203.13, \$95,924.46, \$44,821.61, \$301,239.90 and \$267,971.19, respectively, said requests being made under and subject to the provisions in its subcontract with Kaiser hereinabove

^{*}Deponent says that the reference to ASPR5-407.2(1) was inadvertent, that there was not then nor has there ever been an ASIR5-407.2(1), but that said reference was intended by Murray, Wright and the United States Government to incorporate the partial payment provisions of APR5-497.2(1), -just as was done in the Murray subcontract with Kaiser (Paragraph 1, supra, Exhibit 2-A, Paragraph 4). The language of APR5 107.2(1) was ultimately included in Article 4 of the definitive subcontract between Murray and Wright, dated as of April 19, 1951, but executed in 1952. All partial payments requested by Murray of Wright and paid by Wright to Murray after April 19, 1951, the date of the aforesaid letter contract (Exhibit 5-A. B.), were made in accordance with APR5-407.2(1). APR5-407.2(1) appears in the Code of Federal Regulations, 1947 Supp., Title 10, Chapter VIII, Par. 805-407.2, a copy of which, for the convenience of the Copyt, has been included in the Volume of Plaintiff's Exhibits as Exhibit 3, and which is in substantially the same form as the clauses quoted in Paragraph 1 of this Affidayet from Paragraph 11 of Murray's subcontract with Kaiser (Exhibit 2-B).

quoted regarding the making of such payments (Paragraph (1), supra, Exhibit 2-B, Paragraph 11).

Said requests for partial payments were made upon Form DOI 70-83 of the United States Air Force and pursuant to office restrictions issued by Headquarters, Air Materiel Command, Wright-Patterson Air Force Base at Dayton, Ohio, relating to the processing of invoices for. partial (or progress) payments under procurement and contracting by the United States Air Force, which office instructions were delivered to Murray by the Contracting Officer of the United States Air Force who represented the United States Government in checking, approving and processing such invoices for partial (or progress) payments under Murray's aforesaid subcontracts with Kaiser and Wright (Exhibit 2-A, B, C and Exhibit 5-A, B): Exhibit 6 consists of a mimeographed copy of the aforesaid office : instructions with Form DOI 70-83 attached dated June 16, 1951.

The requests were duly audited by the United States Air Force Audit Staff for the Detroit Area and approved in writing by a Contracting Officer of the United States Air Force representing the United States Government. Each such request bears upon its face the following endorsement duly signed and executed by a Contracting Officer of the United States Air Force:*

"Upon the provisions of the contract, I hereby authorize and approve a partial payment in the amount of \$.....

The aforesaid audits and approvals of Murray's requests for partial (or progress) payments were performed by the Audit Staff and Contracting Officer of the United States Air Force under and pursuant to the requirements of the Air Force's Prime Contract with Kaiser (Exhibit 1 at Page 1, Paragraph 2-b of Amendment No. 4 to the Prime

^{*}The requests of August 10, 1951 and September 21, 1951 were so approved by letters dated 26 September 1951 and 19 October 1951, respectively, photostatic copies of which are included in Exhibit 7.

Contract). Exhibit 7 consists of photostatic copies of the aforesaid requests of Murray for partial (or progress) payments, bearing the Air Force Contracting Officer's approvals.

(4) On October 30, 1951, and December 4, 1951, Murray forwarded formal written requests for partial (or progress) payments to Wright in the amounts of \$371,420.38 and \$139,407.29, respectively, said requests being made under and subject to the provision in its subcontract with Wright hereinabove quoted regarding the making of such payments (Paragraph (2), supra, Exhibit 5-A, Paragraph 5).

Said requests for partial payments were made upon Form DOI 70-83 of the United States Air Force and pursuant to office instructions issued by Headquarters, Air Materiel Command, Wright-Patterson Air Force Base at Dayton, Ohio, relating to the processing of invoices for partial (or progress) payments under procurement and contracting by the United States Air Force (Exhibit 6), which office instructions were delivered to Murray by the Contracting Officer of the United States Air Force who represented the United States Government in checking, approving and processing such invoices for partial (or progress) payments under Murray's aforesaid subcontracts with Kaiser and Wright (Exhibit 2-A, B, C and Exhibit 5-A, B).

The requests were duly audited by the United States Air Force Audit Staff for the Detroit Area and approved in writing by a Contracting Officer of the United States Air Force representing the United States Government. Each such request bears upon its face the following endorsement duly signed and executed by a Contracting Officer of the United States Air Force:

"Approved in the amount of \$

The aforesaid audits and approvals of Murray's requests for partial (or progress) payments were performed by the Audit Staff and Contracting Officer of the United States Air Force under and pursuant to the requirements of the Air Force's Prime Contract with Wright (Exhibit 4 at Page 2, Paragraph (f) of Amendment No. 4 to the Prime Contract). Exhibit S consists of photostatic copies of the aforesaid requests of Murray's for partial (or progress) payments bearing the Air Force Contracting Officer's approvals.

(5) In connection with Murray's requests for partial (or progress) payments under its subcontract with Wright, a letter of inquiry dated December 13, 1951, was addressed to Samuel M. Jacoby, the Air Force Contracting Officer handling Wright's Prime Contract with the United States Air Force (Exhibit 4) by James D. Young, the Air Force Contracting Officer handling Murray's subcontract with Wright (Exhibit 5-A, B). The letter inquired into the procedure to be followed by Contracting Officer Young in approving partial (or progress) payments requested by Murray under its subcontract with Wright, and particularly in approving partial (or progress) payments Nos. 1 and 2 requested by Murray on August 30, 1951 and December 6, 1951, respectively. Paragraph 6 of the letter read, in part, as follows:

"It is requested that you advise the procedure to be used by the secondary Contracting Officer in connection with partial payment invoices,"

Paragraph 7 of the letter states as follows:

"It is suggested that invoices Nos. 1 and 2 be subject to the approval of the Prime Contracting Officer, maxmuch as the purpose of this letter is to confirm only that the costs appearing on the partial payment invoices are reflected on the records and accounts of the subcontractor."

The written reply of Contracting Officer Jacoby to Contracting Officer Young was appended to the original letter. Paragraph 1 of said reply read as follows:

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This is to advise that partial payment invoice No. 1 dated 30 Oct. 1951; for \$371,420.38 and partial payment invoice No. 2 for \$139,407.29, dated 6 Dec. 1951, are approved by the undersigned, based on the Cost Analyst's reports dated 10 December, 1951."

Paragraph 3 of said reply read as follows:

"It is suggested that the following procedure be use for partial payments as requested in Paragraph 6 of basic communication: You will accept under separate letter a cost analysis report and a certification that the costs are proper and your recommendation as to partial payments. Upon receipt, the Prime Contracting Officer will review and approve partial payments."

Exhibit 9 is a photostatic copy of the aforesaid letter of inquiry, with the appended reply...

- to Kaiser, Murray received partial (or progress) payments in the aggregate amount of \$163,949.20 under and subject to the aforesaid provisions of its subcontract with Kaiser (Exhibit 2-A, B, C) on October 12, 1951, Exhibit 10 consists of photostatic copies of the Remittance Advices covering such payments kept by Murray with the check number and date of receipt duly inscribed thereon in the regular course of business pursuant to Murray's regular, usual and ordinary system of record keeping and accounts.
- (7) Pursuant to the aforesaid requests made by Murray to Wright, Murray, on December 31, 1951, received a partial (or progress) payment in the amount of \$510,827,67 under and subject to the aforesaid provisions of its subcontract with Wright (Exhibit 5). Exhibit 11 is a photostatic copy of the Remittance Advice covering such payments kept by Murray with the check number and date of receipt duly inscribed thereon in the regular course of business pursuant to Murray's regular, usual and ordinary system of record keeping and accounts.

- (8) On or prior to January 1, 1952, the tax assessment date here in question, no deliveries of completed parts or subassemblies manufactured by Murray had been made either to Kaiser or to Wright for incorporation into the aircraft which they were producing for the United States Air Force. The aggregate outstanding amount of the partial (or progress) payments as of January 1, 1952 which had been made by Kaiser on behalf of the United States Government to Marray prior to January 1, 1952 for the personal property involved in these proceedings which the City of Detroit assessed amounted to \$163,949.20 and the aggregate outstanding amount of the partial (or progress) payments as of January 1, 1952 which had been made by Wright on behalf of the United States Government to Murray prior to that date for such personal property amounted to \$510,827 57.
- (9) Exhibits 1 and 2 attached to Defendant's Answer are admitted to be accurate and to correctly state the facts and figures relating to the partial (or progress) payments made to Murray prior to January 1, 1952, the tax assessment date here in question, by Kaiser and Wright under and pursuant to the aforesaid provisions of their subcontracts with Murray (Exhibits 2-B and 5-A) and under and pursuant to the aforesaid provisions of the prime contracts in effect between Kaiser and the United States Government (Exhibit 1, Page 1, Paragraph 2-B of Amendment No. 4) and between Wright and the United States Government (Exhibit 4, Pages 1 and 2, Paragraph (f) of Amendment No. 4).

However, as of June 30, 1953, Murray had incurred costs in the performance of said two subcontracts from the inception thereof in the aggregate amount of \$16,264,771.03 against which it had received payments covering its costs aggregating \$14,940,516.80, exclusive of Murray's profits on completed and delivered property.*

^{*}Corrected in conformance with Stipulation 1, pages 83-84 herein.

Of said payments of \$14,940,516.80 received; \$12,550,191.94 represented cost of property exclusive of Murray's profit on billings for completed and delivered products and \$2,390,324.86 represented partial payments on account of work in process, not yet completed or delivered.* Of the \$12,550,191.94, \$10,771,040.31 had originally been paid to Murray in the form of partial payments as the work progressed and the balance of \$1,779,151.63 was paid from time to time as the final invoices were rendered for the completed and delivered product. This \$1,779,151.63 represented the hold-back amounts (over and above said partial payments previously made) which could not be billed until completion and delivery.

Of said aggregate costs of \$16,264,771.03, as of June 30, 1953, there remained at Murray in process and uncompleted work upon which Murray had incurred costs aggregating \$3,714,579.09 (\$16,264,771.03, total costs, less billings of \$12,550,191.94 for cost of completed and delivered products exclusive of Murray's profit)* and upon which Murray had theretofore received partial payments as the work progressed in the sum of \$2,390,324.86. Of the unpaid portion of Murray's costs amounting to \$1,324,254.23 on such in process and uncompleted work, as of June 30, 1953 Murray had previously requested, but had not yet received, partial payments in the amount of \$420,766.10.

(10) Deponent was advised by representatives of Kaiser and Wright and as appears from the Affidavits of E. R. Jones and Nicholas Dykstra of Kaiser and Wright, respectively, filed simultaneously herewith, both Kaiser and Wright were duly reinbursed by the United States Government for the aforesaid partial (or progress) payments made to Murray, all as provided in their aforesaid Prime/Contracts with the United States Air Force (Exhibit 1, Page 1, Paragraph 2-b at Amendment No. 4, and Exhibit 4, Pages 1 and 2, Paragraph (f) of Amendment No. 4) and their aforesaid subcontracts with Murray (Ex-

^{*}Corrected in conformance with Stipulation 1, pages 83-84 herein.



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hibits 2-B, Paragraph 11 and 5-A, Paragraph 5). The aforesaid auditing and approval of Murray's requests for such payments by the Audit Staff and Contracting Officers of the United States Air Force were required prior to the making of such payments to Murray under the aforesaid provisions of Kaiser's and Wright's respective Prime Contracts, with the United States Air Force.

- (11(a)) Murray had no agreement with either Kaiser or Wright, or with the United States Government on, prior or subsequent to January 1, 1952 to repay all or any part of the aforesaid partial (or progress) payments made to it as hereinabove described either under its subcontracts with Kaiser and Wright (Exhibits 2-A, B, C and 5-A, B) or otherwise, nor was there any obligation so to do.
 - (11(b)) At no time were the aforesaid partial (or progress) payments received by Murray from Kaiser and Wright considered to be, nor treated by Murray or its independent public accountants, Touche, Niven, Bailey & Smart, to be liabilities as would loans, advance payments, bills or accounts payable or other indebtedness of Murray.
 - (11(c)) Exhibit 12 is the published Annual Report of Murray for 1952 which contains the Annual Balance Sheet of Murray for the fiscal year ending August 31, 1952 (Pages 10 and 11) and which was duly certified by the national firm of independent public accountants, Touche, Niven, Bailey & Smart. Said Annual Balance Sheet does not reflect the aforesaid partial (or progress) payments made to Murray as liabilities, as would be the case if such payments were loans, advance payments, hills or accounts payable, or other indebtedness of Murray, but rather shows only the unpaid balance of recoverable amounts applicable to Government contracts as assets of Murray.

For example, in 1945, when Murray did obtain advance payments—as distinguished from partial (or progress) payments which were received in 1951—on other government subcontracts, such advance payments received from prime contracts were considered to be and treated by Murray and its independent public accountants, Ernst & Ernst

(with which firm the partners of Touche, Niven, Bailey & Smart, in charge of the Murray account, were then associates or partners) as a current liability under the caption "Advance payments received from Prime Contractors" as is shown in Exhibit 13, which is the published Annual Report of Murray for 1945 and which contains the Annual Balance Sheet for the fiscal year ended August 31, 1945 (Pages 16 and 17) which was duly certified by its said independent public accountants.

- (11(d)) Said partial (or progress) payments received by Murray from Kaiser and Wright did not bear interest payable to either Kaiser or Wright or to the United States Government, nor was any interest ever claimed by them or paid by Murray. Said payments were not segregated nor were such funds placed in a special bank account under the supervision or control of an Air Force Contracting Officer representing the United States Government, as would be the case if said payments were loans or advance payments made pursuant to the approval and authority of the United States Air Force (see Advance Payment Clause, Paragraph 11 (f) of Exhibit 2-B set forth at Paragraph 2 of this Affidavit). Said partial (or progress) payments were placed in the general accounts of Murray and comingled freely with the remainder of Murray's general funds and Murray was in no wise restricted as to the general use thereof.
 - (11(e)) As set forth in Paragraphs (1) and (2) hereinabove, the partial (or progress) payment clauses contained in Murray's subcontracts with Kaiser and Wright (Exhibits 2-B, Paragraph 11 and 5-A, Paragraph 5) each provided that title to property theretofore and thereafter acquired or produced by Murray for the performance of said subcontract vested in the United States Government upon Murray's receipt of any partial (or progress) payment under said subcontract. At all times after the first partial (or progress)/payments were received by Murray under its aforesaid subcontracts, to the date hereof, including January 1, 1952, the tax assessment date here involved,

the cost of all parts, materials, inventories, work in process and non-durable tools—and not only such portion for which Murray had received partial payment—were carried by Murray on its books and records and in its annual balance sheets, under "Current Assets" in an account known as "Total Recoverable Amounts Applicable to Government Contracts", which is a receivable—and not as part of the Murray inventory—all as appears at Pages 10 and 11 of Exhibit 12, Murray's Balance Sheet as of August 31, 1952. As each partial payment on the subcontracts here in question was received the amount thereof was debited to cash and the Total Recoverable Amounts Applicable to Government Contracts was credited and reduced accordingly.

- (11(f)) The aforesaid subcontracts did not contain any provision creating a lien against the general goods and property of Murray upon the making of such partial (or progress) payments thereunder. There was no other agreement in effect between Murray and Kaiser, Murray and Wright, or Murray and the United States Government which provided for such a lien upon the making of such partial (or progress) payments, nor was there any statement in the published Annual Balance Sheet of Murray for any year after the date of such payments, all of which were certified by Touche, Niven, Bailey & Smart, indicating that the Government, Kaiser or Wright had any lien or mortgage upon the inventory or assets of Murray securing them for any of such payments which, if in effect, would have been required under good accounting practice.
- (12) Included in the property assessed to Murray by the City of Detroit and County of Wayne on January 1, 1952, were parts, materials, inventories, work in process and non-durable tools which had been acquired or produced by Murray for the performance of its aforesaid subcontracts with Kaiser and Wright (Exhibits 2-A, B, C and 5-A, B) having an assessed value of \$2,043,670.00* upon

^{*}Corrected in conformance with Stipulation 1, pages 83-84 herein.

which the aforesaid partial (or progress) payments had been made by Kaiser and Wright for and on behalf of the United States Government. Said amount is ninety per cent of Murray's cost of said assessed property, which was part of the formula employed by the Assessors in arriving at the 'true cash value' of said assessed property.

On, prior and subsequent to January 1, 1953, such assessed property was clearly identified as property owned and belonging to the United States Government by tagging, labeling or by segregation from other personal property owned and belonging to Murray in connection with the conduct of its regular business. Upon their acquisition or production by Murray, individual tools, parts and subas-. semblies were tagged, stamped or labeled as property owned and belonging to the United States Government by serial numbers which identified them as such. Those tools, parts or subassemblies which were too small to permit such tagging, stamping or labeling were segregated both in storage and in use from personal property owned and belonging to Murray as were materials and supplies acquired by Murray for the performance of its aforesaid subcontracts, and such tools, parts, subassemblies, materials and supplies were not co-mingled with the personal property owned and belonging to Murray and used by Murray in the conduct of its regular business.

(13) Murray's aforesaid subcontract with Kaiser provided that it was entered into under and subject to the provisions of Kaiser's Prime Contract with the United States Government, as follows (Exhibit 2-A, Page 1 in the Preamble and Page 3, Paragraph 9):

(Preamble) ... we will be pleased to enter into a subcontract with you under your Letter Contract AF 33(038)-18481 with the United States Government ... covering your requirements of the various parts listed in your proposal

Corrected in conformance with Stipulation 1, pages 83-84 herein.



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"9: It is understood that this Letter Agreement is subject to the applicable provisions of your Letter Contract, as amended by Amendments 1 and 2 and to the approval of your Contracting Officer in the form set forth below."

Murray's aforesaid subcontract with Wright also provided that it was entered into under Wright's aforesaid Prime Contract with the United States Government, as follows (Exhibit 5-A, Page 1 in the Preamble):

(Preamble) "We will be pleased to enter into a subcontract with you under your contract AF 33(038) 18132 with the United States Government pursuant to which subcontract we would manufacture and sell to you the following subassemblies..."

In addition to the above quoted provisions of Murray's said subcontracts so indicating, deponent further says that, as representative of Murray, he was advised by the representatives of Kaiser and Wright and Contracting Officers of the United States Air Force, representing the United States Government, that the property acquired or produced by Murray for the performance of the said subcontracts, which was assessed by the City of Detroit and County of Wayne at a value of \$2,043,670.00* as hereinabove described, was so acquired or produced by Murray for the ultimate use and benefit of the United States Air Force, that hone was so acquired or produced by Mulray for the ultimate use and benefit of Murray, Kaiser or Wright, and that the parts and subassemblies which Murray had so subcontracted to manufacture were eventually to be owned and used by the United States Air Force as component parts of the aircraft which Kaiser and Wright had entered into prime contracts with the United States Air Force (Exhibits

^{*}Corrected in conformance with Stipulation 1, pages 83-84 herein.

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1 and 4) to produce in furtherance of the National Defense effort.

Mark I. Sammon

Subscribed and sworn to before me this 1st day of December 31.D. 1953:

Sara V. C. Christiansen, Notary Public, Wayne County, Michigan. My commission expires: Apr. 22, 1956.

EXHIBIT B

AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

State of Michigan County of Washtenaw—ss.

. E. R. Jones, being first duly sworn, deposes and says:

I am the Assistant Controller of Willys Motors, Inc. (formerly known as Kaiser Manufacturing Corporation, and hereinafter called "Willys"), and have personal knowledge of the facts herein set forth.

As the Assistant Controller my duties and responsibilities include the supervision of the Accounting Functions of Willys' prime contracts with the United States Government and such subcontracts as may be entered into by Willys with other companies thereunder, with the approval of the United States Government, and the billings, collections of amounts owing and payments made by and to Willys under such prime and subcontracts.

In connection with the duties hereinabove described, I am kept advised in the normal and regular course of business on the performance and operation of such prime and subcontracts and of the deliveries, completions, billings and payments made thereunder. I have held my present duties and responsibilities with Willys for four years, including

identical functions with respect to the general business and properties of Kaiser Manufacturing Corporation, predecessor to Willys, since April 24, 1953, the date when the name Kaiser Manufacturing Corporation was changed to Willys Motors, Inc.

- 1. On, prior and subsequent to January 1, 1952, Willys, then known a Kaiser Manufacturing Corporation, held a Prime Contract with the United States Government for the manufacture of a certain type of aircraft and the spare parts, tools and equipment therefor required for the ultimate use and benefit of the United States Air Force. Said Prime Contract was and is identified as No. AF 33(038)-18481.
 - 2. Prior to January 1, 1952; Willys, with the required approval of the United States Government, entered into a subcontract dated March 23, 1951, with the Murray Corporation of America (hereinafter called "Murray") for the manufacture of certain parts and subassemblies by Murray, which were required for the performance of Willys' aforesaid Prime Contract No. AF 33(038)-18481. Said subcontract was in effect on, prior and subsequent to January 1, 1952.
 - 3. On August 10, 1951, September 21, 1951, October 24, 1951, December 10, 1951 and December 20, 1951, Murray forwarded to Willys formal written requests for partial (or progress) payments, under and pursuant to the provisions of Paragraph 11 of their aforesaid subcontract, in the amounts of \$23,203.13, \$95,924.46, \$44,821.61, \$301,239.90 and \$267,971.19, respectively.
- 4. Pursuant to the aforesaid requests by Murray, Willys made partial (or progress) payments to Murray on October 12, 1951, October 31, 1951 and December 31, 1951, in the amounts of \$23,203.13, \$95,924.46 and \$44,821.61, respectively.
- 5. In accordance with the provisions of its aforesaid Prime Contract No. AF 33(038)-18481 (Amendment No. 4, Page 1, Paragraph 2-B), and to the extent provided therein, Willys has been duly reimbursed for the partial

Motion for Summary Judgment Affidavit of E. R. Jones

(or progress) payments made to Murray, as aforesaid, by the United States Government, Exhibits 1, 2 and 3 attached hereto consist of photostatic copies of Willys' Public Vouchers to the United States Government requesting and attesting to such reimbursement.

E. R. Jones

Subscribed and sworn to before me this 11th day of November 1953.

Adams T. Allen, Notary Public, Washtenaw County, Michigan My countission expires: May 21, 1956.

EXHIBIT 1

COST REIMBURSABLE

PUBLIC YOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

D. O. Vou. No. 6154Bu. Vou. No. 8477

U.S. Department of the Air Force

Voucher prepared at Willow Run, Michigan 10/12/51

The United States, Dr.,

To Bank of America, National Trust and Savings Association, assignee (account of Kaiser Manufacturing Corporation) Oakland Main Office, 12th and Broadway, Oakland, California.

ARTICLE OR SERVICES

(Enter description, item number of contract or Federal supply schedule, and other information deemed necessary)

We certify that this account is assigned to Bank of America, National Trust and Savings Association, Oakland Main Office, 12th and Broadway, Oakland, California.

Kaiser Manufacturing Corporation By....

N. A. Koop, Chief Accountant.

Payment: Partial (x)

> Kaiser Manufacturing Corporation N. A. Koop, Chief Accountant

Contract No. AF33 (038) 18481

Date 12/20/50

Paid by F. E. Hupp Major, USAF Detroit, Mich. Sym No. 225-231 Sta No. 6181 Oct 1951

Amount

\$20,882.82

Notices of Assignment filed with Vou. 991 July 1951. Acets. F. E. Hupp, Major USAF (225-231)

Total \$20,882.82

F. P. Bretney, Captain, U.S.A.F. Contracting Officer

Motion for Summary Indgment Affidard of E. R. Jones

MEMORANDUM

Accounting Classification (for completion by Administrative Office)— Appropriation, limitation or project symbol: 571300. Appropriation title: S33-400 F113(1)-09 233-600.

Appropriation Amount: \$20,882.82.

Paid by Check No. 6473 dated Oct. 19, 1951 for \$20,882.82 on Treasurer of the United States in favor of payee named above. .

Please return to Kaiser Manufacturing Corporation, ... Willow Run, Michigan.

MEMORANDUM

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

CONTINUATION SHEET

T.S. Department of the Air Force Sheet No. 2 of Bureau Voucher No. 8477.

ARTICLES OR SERVICES

For reimbursement of costs incurred in performance of Contract No. AF.33 (038) 18481.

Accounts Payable Vouchers-October, 1951.

Vou. Check
Vendor Date: No. No. Amount

The Murray Corp. of America 10/10 5834 5599 \$23,203.13 Less 10% 2,320.31

90% due for reimbursement in accordance with Paragraph 12 of letter contract and Amendment No. 4 dated March 29, 1951.

Total. \$20,882.82

\$20,882.82

Audited and approved for \$20,882.82 Oct. 17, 1951.

Sidney C. Solomon, USAF, Auditor

EXHIBIT 2

COST REIMBURSABLE

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

D. O. You. No. 8549 Bu. Vou. No. 8970

U.S. Department of the Air Force

Voucher prepared at Willow Run, Michigan 10-31-51

The United States, Dr.,

To Bank of America, National Trust and Savings Association, assignee (account of Kaiser Manufacturing Corporation) Oakland Main Office, 12th and Broadway, Oakland, California.

ARTICLE OR SERVICES .

(Enter description, item number of contract or Federal supply schedule, and other information deemed necessary)

We certify that this account is assigned to Bank of America, National Trust and Savings Association, Oakland Main Office, 12th and Broadway, Oakland, California.

Kaiser Manufacturing Corporation By....

N: A. Koop, Chief Accountant

Payment; Partial (x)

· 543rd partial payment

Total \$86,332.01

Notices of Assign-

ment filed with Vou.

991 July 1951. Accts.

F. E. Hupp, Major USAF (225-231)

10/31/51 Kaiser Manufacturing Corporation N. A. Koop, Chief Accountant

Contract No. AF33 (938) 48481 Date 12/20/50

F. P. Bretney, Captain USAF Contracting Officer

F. E. Hupp Major, USAF Detroit, Mich. Sym No. 225-231 Sta No. 6181 Nov 1951

Paid by

Amount

\$86,232.01

Motion for Summary Ludgment Affidavit of E. R. Jones

M'EMORANDUM

Accounting Classification (for completion by Administrative Office)—
*Appropriation, limitation, or project symbol: 5713100.

Appropriation title: 163-5000 F113(1)-09 S33-400.

Appropriation amount: \$86,331.01.

Part paid by Check No. 56331 dated Nov. 1951 for \$670,825.98 on Treasurer of the United States in favor of payee named above:

Mease return to Kaiser Manufacturing Corporation, Willow Run, Michigan.

MEMORANDUM

COST REIMBURSABLE—10/31/51 PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

CONTINUATION SHEET

U.S. Department of the Air Force.

Sheet No. 2 of Bureau Voucher No. S-970

ARTICLES OR SERVICES

For reimbursement of costs incurred in performance of Contract No. AF33(038)18481:

Accounts Payable Voucher-10/30/51.

| | | | | | vou. | Check | |
|------------|---------|---------|------|-----|------|-------|-------------|
| Vendor | | | . 1) | ate | 'No. | No. | Amount |
| The Murray | Corp of | America | 10 | /30 | 7317 | 6893 | \$95,924.46 |
| Less 10% | • | | | | | | 9,592.45 |

90% due for reimbursement in accordance with Paragraph 12 of letter contract and Amendment No. 4 dated March 29, 1951.

Total. \$86,332.01

\$86,332.01

Audited and approved for \$86,332.01 Nov. 27, 1951.

Sidney C. Solomon Sidney C. Solomon, USAF Auditor

EXHIBIT 3

COST REIMBURSABLE

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

D. O. Vou. No. 10339Bu. Vou. No. S 790

U.S. Department of the Air Force

Voucher prepared at Willow Run, Michigan . 12-27-51

The United States, Dr.,

To Bank of America, National Trust and Savings Association, assignee (account of Kaiser Manufacturing Corporation) Oakland Main Office, 12th and Broadway, Oakland, California.

Paid by
F. E. Hupp
Major, USAF
Detroit, Mich.
Sym No. 225-231
Sta No. 6181
Jan 1952

ARTICLES OR SERVICES

Enter description, item number of contract or general supply schedule, and other information deemed necessary

Brought forward from continuation sheets

Notices of Assignment filed with Vou. 991 July, 1951. Accts. F. E. Hupp, Major; USAF (225-231)

Partial No. 489th Partial

\$44,821.61

Total \$44,821.61

Kaiser Manufacturing Corporation
R. C. Boland Director of Treasury
AF 33 (038) 18481 12-20-50

F. P. Bretney, Captain, USAF Contracting Officer

Motion for Summary Judgment Affidavit of E. R. Jones .

MEMORANDUM

Accounting Classification (for completion by Administrative Office) -Appropriation, limitation, or project symbol: 57x3100. Appropriation title: 163-5000 F113(1)-09 s33-400. Appropriation amount: \$44,821.61.

Part. of paid by Check No. 63933 dated Jan. 7, 1952 for \$474,907.71 s790 on Treasurer of the United States in favor of payee named above.

Please return to-Kaiser Manufacturing Corporation, Willow Run, Michigan.

MEMORANDUM

COST REIMBURSABLE

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL .

CONTINUATION SHEET

U.S. Department of the Air Force.

Sheet No. 2 of Bureau Voucher No. s-790

ARTICLES OR SERVICES

For reimbursements of costs incurred in performance of Contract No. AF.33 (038) 18481.

Accounts Payable Voucher-December

Vou. Check Amount No. No. Date Vendor -12/27 11541 11846 \$44,821.61

The Murray Corp. of America

Total, \$44,821.61

Audited and approved for \$44,821.61, Dec. 28, 1951.

Sidney C. Solomon, USAF Auditor. Sidney C. Solomon

EXCIBIT C

AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

State of New Jersey, County of Bergen—ss.

NICHOLAS DYKSTRA, being first duly sworn, deposes and says:

I am the Controller of Wright Aeronautical Division of the Curtiss Wright Corporation (formerly Wright Aeronautical Corporation, and hereafter called "Wright"), and have personal knowledge of the facts herein set forth.

As Controller of Wright, my duties and responsibilities include the custody, control and supervision of the general books of account maintained by Wright in the usual, ordinary and regular course of business, and specifically the records maintained and kept by Wright relating to Accounts. Receivable and Accounts Payable, including the records relating to the performance, status and operation of Wright's Prime Contracts with the United States Government and subcontracts entered into by Wright thereunder and the billings, collections of amounts owing and payments made, by Wright to said subcontractors or to Wright by the United States Government.

In connection with the duties hereinabove described, I am kept advised in the usual course of business of the performance, completion and operation of Wright's Prime Contracts with the United States Government and subcontracts with its subcontractors thereunder, and of the deliveries, completions and payments made thereunder, and in connection with such matters concerning such contracts and subcontracts, regularly deal directly with the representatives of the United States Government and of subcontractors of Wrights.

Motion for Summary Judgment' Affidavit of Nicholas Dykstra

- 1. On, prior and subsequent to January 1, 1952, Wright held a Prime Contract with the United States Government for the furnishing and delivery to the Government of certain types of aircraft engines and the space parts, tools and equipment therefor, required for the ultimate use and benefit of the United States Government. Said Prime Contract was and is identified as No. AF33(038)-18132.
- 2. Prior to January 1, 1952, Wright, with the required approval of the United States Government, entered into a subcontract with The Murray Corporation of America (hereinafter called "Murray") for the manufacture and sale of certain parts and subassemblies by Murray, which were required for the performance of Wright's aforesaid Prime Contract No. AF33(038)-18132. Said subcontract, dated April 19, 1951, was in effect on, prior and subsequent to January 1, 1952.
- 3. On October 30, 1951, and December 4, 1951, Murray forwarded to Wright formal written requests for partial (or progress) payments under and pursuant to the provisions of Paragraph 5 of their aforesaid subcontracts, in the amounts of \$371,420.38 and \$139,407.29, respectively.
- 4. Pursuant to the aforesaid requests by Murray, Wright made a partial (or progress) payment to Murray on December 31, 1951; in the amount of \$510,827.67.
- 5. In accordance with the provisions of its aforesaid Prime Contract No. AF33(038)-18132 (Amendment No. 4, Page 2, Paragraph (f)), and to the extent provided therein, Wright was duly reimbursed for the partial (or progress) payment made to Murray, as aforesaid, by the United States Government. Exhibits Nos. 1 and 2 attached hereto consist of a photostatic copy of Wright's invoices to the United States Government requesting such reimbursement and a photostatic copy of the Public Voucher, from the United States Government to Wright attesting for such reimbursement, respectively.

6. Exhibit No. 3 attached hereto consists of a photostatic copy of a letter dated December 13, 1951, from James D. Young, Contracting Officer, Detroit Air Regional Office, to Air Force Plant Representative, Wright Aeronauteal Division, Wood-Ridge, New Jersey, attention, Mr. Samuel-M. Jacoby; and Mr. Jacoby's reply thereto dated December 20, 1951, which is appended. Said photostatic copy (Exhibit No. 3) was made from the copy of said letter contained in the official files of said Air Force Plant Representative at Wood-Ridge, New Jersey, as relating to the operation and performance of Wright's aforesaid Prime Contract No. AF33(038)-18132, and Wright's aforesaid subcontract with Murray entered into under said Prime Contract.

Nicholas Dykstra.

Subscribed and sworn to before me this 16th day of November, 1953.

(s) M. C. Murray. Notary Public, My commission expires October 4, 1958.

EXHIBIT 1

CURTISS-WRIGHT CORPORATION WRIGHT AERONAUTICAL DIVISION

Wood-Ridge, New Jersey

Invoice No. 032-5005

Date 12-27-51

Sold To: Accounting & Disbursing Office U.S.A.F.

A.F.P.F.O.

67 Broad St. .

New York, New York

Partial payment Request No. 32 on contract No. AF: 33(038)-18132 in accordance with paragraph 2 (C) of the Letter Contract Amendment No. 2.

Motion for Summary Judgment Affidavit of Nicholas Dykstra

Payment made to the Murray Corporation of America on 12-27-51 their invoice #1 and #2 Wright Aeronautical Voucher #12-10297 and #12-10298, Wright Aeronautical Check #80768.

| A | рþ | rov | ced | Invoice | #1 | 371,420.38 - 139,407.29 |
|---|----|-----|-----|---------|----|----------------------------|
| • | | | ٠ | • | | *** |
| | | | | | | .510,827.67 |

I certify that the records of the contractor have been inspected by Air Forces Auditor and that the statement of expenditures herein is to the best of my knowledge and belief, true and correct and prepared in accordance with instructions now in force. I hereby authorize and approve a partial payment in the amount of \$3\$3,120.75

Samuel M. Jacoby,
A. F. Contracting Officer.

EXHIBIT 2

*PUBLIC VOUCHER FOR PURCHASES, AND SERVICES OTHER THAN PERSONAL

U. S. Department of the Air Force

Voucher prepared at 67 Broad St. N. Y. C.

The United States, Dr.,

· (Wright Aeronautical Div.)
To Curtiss Wright Corporation

Wood-Ridge, N. J.

Paid by Hoke McWhorter Lt. Col: USAF Sym. 225 036 Sta. 6170

ARTICLES OR SERVICES

Date of Delivery or Service Discount Terms Net (Enter description, item number of contract or Federal supply schedule, and other information deemed necessary)

Amount

12-27-51 Invoice No. D82-5005 12-26-51 D81-5005

383,120,75 106,213,15

34th "Works in Progress" payment

Payment:

Partial x 34 W. I. P. Payment

34 P. P.

Check #109.165

Total 489,333.90

Contract No. AF-33(038)-18132 Date 12-15-50 Approved for \$489,333.90.

Deputy Disbursing Officer.

Accounting Classification:

Appropriation, limitation, or project symbol: 57x3100. Appropriation title: 163-5000 P122-09 S33-600.

Appropriation amount: 489,333.90.

Paid by Check No......dated 4 Jan. 1952 for \$489,333.90 on Treasurer of the United States in favor of the payee named above.

EXHIBIT 3

DETROIT AIR REGIONAL OFFICE

JDY/jlh/29 13 December 1951

CEHDC

Subject: Murray Corporation Subcontractor Contract AF 33(038)18132

To: AF Representative
Wright Aeronautical Division
Curtiss-Wright Corporation
Wood-Ridge, New Jersey

Attention: Mr. Samuel M. Jacoby

- 1. Attached hereto find two (2) copies of Partial Payment Invoice No. 1 in the amount of \$371,420.38 dated 30 October 1951. Also attached find two (2) copies of Partial Payment Invoice No. 2 in the amount of \$139,407.29 dated 6 December 1951.
- 2. Also attached find two (2) copies of Cost Analyst Report, both dated 10 December 1951. During this review, it was found that in some cases, there were found costs pertaining to special tools, which had been invoiced by vendors and paid for 100% by Murray.
- 3. The normal procedure as practiced by this office in regard to contractor's receipt of Government furnished property, is that the Government accepts full tide and assumes accountability simultaneously.
- 4. It was believed by the undersigned that the subcontractor would be reimbursed for all items of cost pertaining to purchases of special tools and to such subcontractors cost for plant rearrangement on a 100% basis. It was further believed by the undersigned that any reference to 75% partial payment as stated in letter of agreement be-

Motion for Summary Judgment Affidevit of Nicholas Dykstra

tween the prime and the subcontractor was intended to be a method of payment to be subcontractor for cost of materials acquired and labor costs within the subcontractor's own plant(s).

- 5. The total amount of Invoices 1 and 2 is \$510,827.67 which is represented by the contractor to be 75% of cost which is computed on the basis of deductions for items delivered, reference Invoice No. 2, line 10.
- 6. Your attention is invited to the fact that the undersigned has not received a copy of the definitive agreement in this case. It is requested that you advise the procedure to be used by the secondary Contracting Officer in connection with partial payment invoices.
- 7: It is suggested that Invoices No. 1 and 2 be subject to approval of the Prime Contracting Officer, inasmuch as the purpose of this letter is to confirm only that the costs appearing on the partial payment invoices are reflected on the records and accounts of the subcontractor.

James D. Young Contracting Officer

Incls: a/s

Detroit Air Regional Office, Central AF Procurement District, West Warren Avenue & Lonyo Boulevard, Detroit 32, Michigan. Subj.: Murray Corporation Subcontractor, Contract AF 33(038)-18132.

RARWC-8 (13 December 1951) 1st Ind.

HX/el

AF Plant Representative, Curtiss-Wright Corporation, Wright Aeronautical Division, Wood-Ridge, New Jersey 20 December 1951

To: Air Regional Representative, Detroit Regional Office, Central Procurement District, West Warren Avenue & Lonyo Boulevard, Detroit 32, Michigan.

Motion for Sami, ary Judgment Affidavit of Nicholas Dykstra

- 1. This is to advise that partial payment invoices No. 1 dated 30 October 1951 for \$371,420.38 and partial payment invoice No. 2 for \$139,407.29 dated 6 December 1951 are approved by the undersigned, based on the Cost Analyst's reports dated 10 December 1951.
- 2. The definitive contract in this matter has not as yet been formalized. The letter contract contains the usual partial payment clause providing for partial payment up to 75% of costs.
- 3. It is suggested that the following procedure be used for partial payments as requested in Par. 6 of basic communication. You will prepare under separate letter a cost analysis report and a certification that the costs are proper and your recommendation as to partial payments. Upon receipt, the Prime Contracting Officer will review and approve partial payments.
- 4. With reference to special tools, accountability for same will be picked up by the AFO upon the submission of an inventory which will be submitted by each vendor upon an effective date to be announced by Wright Aeronautical Division. Accountability will not be picked up on individual payments.

RARWC-8 Subject: Murray Corporation Subcontractor, Contract AF 33(038)-18132

- 5. In hardship cases, a vendor will be paid 100% upon the submission of an inventory and transfer of title to the USAF.
- 6. It is believed that paragraphs 4 and 5 above clarify your statements in paragraphs 3 and 4 of basic communication.

Samuel M. Jacoby Contracting Officer

ey: O. C. Becker Resident Auditor

PETITION OF THE UNITED STATES FOR LEAVE TO INTERVENE AND INTERVENING PETITION

(Filed January 19, 1954)

The United States of America by its attorney, Frederick W. Kaess, United States Attorney for the Eastern District of Michigan, respectfully alleges that it has a real and substantial interest in the matter in litigation and therefore desires to become a party to the litigation by uniting with the plaintiff in the obtaining of the relief sought in this action for the use and benefit of the United States, and as grounds therefor alleges:

T.

That the intervention for which leave is prayed herein is authorized by the Attorney General of the United States and is at the request of the United States Air Force.

11

That the intervenor adopts and incorporates herein by reference all of the allegations and conclusions contained in the plaintiff's petition herein.

III.

That by reason of the facts so alleged, your petitioner has an interest in this cause which it is entitled to protect by intervention herein. Wherefore, your petitioner, United States of America, respectfully prays that leave be granted to it to intervene in this cause: that an order be entered allowing intervention; and that this petition for leave to intervene be considered and adopted by this Court as the intervening petition of the United States.

Your petitioner further prays that the judgment prayed:
for by the plaintiff in its petition be entered and that the

Answer of Defendant County to Petition for Leave to Intervene

Court grant such other and further relief as it may deem proper.

United States of America.

Fred W. Kaess, United States Attorney, Attorney for Petitioner.

Dated: January, 1954.

ANSWER TO PLAINTIFF'S PETITION FOR LEAVE TO INTERVENE, AND PETITION FOR REFUND OF TAXES

(Filed January 25, 1954)

Now comes the County of Wayne, a municipal corporation and corporate body politic, by its undersigned attorneys, and for answer to the Petition of the United States for Leave to Intervene and Intervening Petition, says:

I

As to the allegations contained in Paragraph "I", Petitioner, the United States of America, is left to its proofs.

II.

As to the allegations contained in Paragraph "II", that the United States of America, as intervenor, adopts and incorporates in its said petition by reference all of the allegations and conclusions contained in petition of The Murray Corporation of America, plaintiff, this answering defendant, the County of Wayne, adopts, and incorporates herein by reference all of the averments and defenses more particularly set forth in Paragraphs "1" to "13", inclusive, of the answer of this defendant to the petition and complaint of The Murray Corporation of America, including all of the "affirmative defenses" in Count I, paragraphs "1" to "6", inclusive, and in Count II, paragraphs "1" to "6", inclusive, and in Count III, paragraphs "1" and "2" of this defendant's said answer, without herein again

repeating said averments and defenses sentence by sentence and paragraph by paragraph.

As to the allegations contained in Paragraph "III", that said petitioner, the United States of America, has interest in this cause, which it is entitled to protect by intervention, said petitioner is left to its proofs.

Further answering, this defendant, the County of Wayne, denies that the plaintiff, The Murray Corporation of America, or intervening petitioner, the United States of America, is entitled to any judgment in any sum whatsoever against this answering defendant, and prays that the petitions of said plaintiff and intervening defendant be dismissed, with costs in this behalf by this answering defendant most wrongfully sustained. .

> Gerald K. O'Brien, Prosecuting Attorney; Hobart Taylor, Jr., and Philip A. McHugh.

Assistant Prosecuting Attorneys.

By Philip A. McHugh, Assistant Prosecuting Attorney, Attorneys for the Defendant, County of Wayne, 508 County Building, Detroit 26, Michigan.

Dated: January 25, 1954.

ORDER GRANTING INTERVENTION

(Filed February 4, 1954)

At a session of said Court held in the Federal Building at Detroit, Michigan, this 4th day of February 1954.

Present: Honorable Thomas P. Thornton, District Judge.

This cause came on to be heard upon the motion of the United States to intervene and for other relief and the Court being satisfied that the United States has the right to intervene and become a party herein and may intervene and become a party herein under the provisions of Rule 24(b)(2) of the Federal Rules of Civil Procedure.

It is Ordered:

- 1. That said motion of the United States is in all respects granted.
- 2. That the United States is hereby made a party to this cause and shall receive notice of all proceedings.
- 3. That the pleading of the United States in intervention annexed to said motion is deemed the appearance of the United States in support of the plaintiff in the obtaining of the relief sought in this action and that such pleading of the United States in intervention is deemed the appearance of the United States for the purpose of asserting its claims and defenses under Rule 24(b)(2) of the Federal Rules of Civil Procedure; and in opposition to all pleadings and motions of the parties hereto that have been made herein so far as said pleadings or motions relate to said claims or defenses.

Thomas P. Thornton,
District Judge.

ANSWER OF DEFENDANT CITY OF DETROIT TO COMPLAINT OF UNITED STATES, INTERVENOR

(Filed February 15, 1954)

For answer to the claims and defenses adopted by the United States, Intervenor, in the above entitled cause, the defendant City of Detroit, a Michigan municipal corporation, says:

I.

It adopts and incorporates by reference all of the averments and defenses, general and special, as have heretofore been set forth in the pleadings by it filed in answer and opposition to the complaint of the Murray Corporation of America as well as to such other matters filed herein by said plaintiff or intervenor, without herein repeating the same, sentence by sentence and paragraph by paragraph.

II.

It denies that the plaintiff or the United States, Intervenor, are entitled to judgment in any sum whatsoever against this defendant and therefore prays that the complaint of said plaintiff and Intervenor be dismissed with costs to this defendant.

City of Detroit, a Municipal corporation,

By Paul T. Dwyer, Corporation Counsel,

and

Julius C. Pliskow,
Bert Sogge,
Assistants Corporation Counsel,
301 City Hall,
Detroit 26, Michigan,

ANSWER OF DEFENDANT COUNTY OF WAYNE TO COMPLAINT OF UNITED STATES, INTERVENOR

(Filed March 1, 1954)

For answer to the claims and defenses adopted by the United States, Intervenor, in the above entitled cause, the defendant County of Wayne, a Michigan constitutional body corporate, says:

I.

It adopts and incorporates by reference all of the averments and defenses, general and special, as have heretofore been set forth in the pleadings by it filed in answer and opposition to the complaint of The Murray Corporation of America, as well as to such other matters filed herein by said plaintiff or intervenor, without herein repeating the same, sentence by sentence and paragraph by paragraph.

II.

It denies that the plaintiff or the United States, Intervenor, are entitled to judgment in any sum whatsoever against this defendant and therefore prays that the complaint of said plaintiff and Intervenor be dismissed with costs to this defendant.

County of Wayne, a Michigan constitutional body corporate,

By 'Gerald K. O'Brien,
Prosecuting Attorney,.

and

Hobart Taylor, Jr.,
Assistant Prosecuting Attorney,
Attorneys for Defendant
County of Wayne,
508 County Building,
Detroit 26, Michigan.

Dated: February 27, 1954.

STIPULATION No. 1

(Filed March 9, 1954)

It is Stipulated and Agreed by and between the parties hereto, by their respective counsel, as follows:

- (1) Plaintiff, Murray, solely for the purpose of this action, waives any claim that the assessment in question is in error, because of the alleged different method of valuation by defendants in assessing personal property as contrasted with assessment of real property as set forth in the protests, Exhibit A, attached to the Complaints.
- (2) Defendants do not claim that the alleged defense of insufficiency of plaintiff's protests, Exhibit A, attached to the Complaints, goes to procedural or technical defects, but submit that it is based solely upon the contention that the grounds contained in said protests are insufficient as a matter of law in that defendants assert that title to the property assessed and here in dispute was not vested in the United States Government on January 1, 1952, the assessment date.
- (3) Tools already owned and furnished by the United States Government to plaintiff Murray under a separate facilities contract were not assessed and therefore are not involved in this dispute.
- (4) (a) Among the items plaintiff Murray was required to produce or acquire under the subcontracts here in question were certain tools. Such tools which were in process and uncompleted prior to January 1, 1952, were included in the assessed property by the Assessors.
- (b) However such tools as had been completed prior to January 1, 1952 were not assessed and are not a subject of this suit. The value of such completed tools was \$566,780, as appears in plaintiff Murray's written protest (Exhibit Λ attached to the Complaints in this consolidated action). Such completed tools remained in the possession of plaintiff Murray for its use in production of goods under the subcontracts in question.

- (5) No goods, other than those mentioned in (4) (b) hereinabove, or sub-assemblies had been completed, inspected or delivered to either of the prime contractors by plaintiff. Murray under said subcontracts prior to January 1, 1952 and all such uncompleted property was subjected to the assessment here in dispute.
 - (6) The Murray Corporation was the beneficiary under its insurance policies in force on January 1, 1952 on "All real and personal property of the insured, including manuscripts, mechanical drawings, tools, dies, jigs and patterns, their own, or held by them in trust or on commission, or on consignment, or sold but not delivered or removed, or for which they are liable, all while located in and/or on the premises occupied by the insured."
 - (7) The figure "\$2,390,324.86" shall be substituted for "\$2,811,090.96" appearing in the third line of the second paragraph on Page 13-A of the affidavit of Mark I. Sammon.

The first paragraph and the first sentence of the second paragraph on Page 13-A of the affidavit of Mark I. Sammon should be corrected to read as follows:

"However, as of June 30, 1953, Murray had incurred costs in the performance of said two subcontracts from the inception thereof in the aggregate amount of \$16,264,771.03 against which it had received payments covering its costs aggregating \$14,940,516.80, exclusive of Murray's profits on completed and delivered property.

Of said payments of \$14,940,516.80 received, \$12,550,191.94 represented cost of property, exclusive of Murray's profit on billings for completed and delivered products and \$2,390,324.86 represented partial payments on account of work in process, not yet completed or delivered."

The fifth line of the third paragraph on Page 13-A of the affidavit of Mark I. Sammon, should be deleted and in lieu thereof, the following should be substituted: "for cost of completed and delivered products, exclusive of Murray's profit) and upon which Murray had..."

Substitute on pages 17 and 19 of the affidavit of Mark I. Sammon, the figure "\$2,043,670" for and in place of the figure "\$2,145,400", and on page 17 strike the entire last sentence of the first paragraph of (12) and substitute therefor the following:

"Said amount is 90% of Murray's cost of said assessed property which was part of the formula employed by the Assessors in arriving at the 'true cash value' of said assessed property."

The affidavit of Mark I. Sammon as here amended is understood to be his sworn statement of facts, but not considered as stipulated to by defendants.

- (8) The agreed upon assessed valuation here in dispute is \$2,043,670 and such amount is hereby substituted for the figure of \$2,145,400 which appears in the Complaints and in the affidavit of Mark I. Sammon. The claim of the plaintiff for refund against the City of Detroit by virtue of said alleged illegal assessment is \$67,714.96, exclusive of interest, for the entire tax year in question, and the claim of the plaintiff for refund against the County of Wayne by virtue of said alleged illegal assessment is \$12,572.66, exclusive of interest, for the entire tax year in question. The City tax rate for that year was 33.134, and the County tax rate for that year was 6.152.
 - (9) Attached hereto and made a part hereof is Wright Aeronautical Corporation Basic Agreement No. 1, AF 33(038)-4005, which is referred to and incorporated by reference on Page 2 of the Letter Prime Contract, Exhibit 4 of the Volume of plaintiff's exhibits referred to in the affidavit of Mark I. Sammon in support of the Motion for Summary Judgment, between the United States Air Force and Wright Aeronautical Corporation.

(10) The facts stipulated in paragraphs 3 through 9 hereof are agreed facts, except as noted in 7 hereof, without agreement as to the materiality thereof, which question of materiality, if raised, shall be determined by the Court.

& Kennedy,
By Victor W. Klein,
Attorneys for Plaintiff,
The Murray Corporation
of America:

Butzel, Eaman, Long, Gust

Paul T. Dwyer,
Corporation Counsel,
By Julius C. Pliskow,
Attorney for defendant,
City of Detroit;

By Hobart Taylor Jr.,
Attorney for Defendant,
County of Wayne.

Dated: February 19, 1954.

STIPULATION No. 2

(Filed March 9, 1954)

It is stipulated and agreed by and between the parties hereto, by their respective counsel, as follows:

between the United States Air Force, Kaiser and Wright, the negotiating parties did not consider the possible avoidance of City and County ad valorem and personal property taxes as an element in their decision as to whether or not the standard partial payment clause (referred to in procurement regulations) should be inserted in these contracts. The amount by which the expenditure of the Government might have been reduced, if the inclusion of the partial payment clause produced such a result, was small in relation to the total expenditure contemplated by the Air

Force for aircraft procurement, although it probably involved millions of dollars in overall increased procurement costs. The actual factors which the parties considered in arriving at a determination to include such partial payment clauses were the needs of the contractor for partial payments as the work progressed in view of the period of time involved in the performance of each contract, together with the desire of the Air Force to maintain control of material and work in process during the life of the contract so that such material could be moved elsewhere in the event of nonperformance.

- (2). It is stated by Air Force representatives that partial payment clauses with provisions vesting the title in the United States have been included in upwards of 80% of fixed price prime and subcontracts for the production of aircraft for the United States, by contract, and in substantially a greater percentage of contracts, dollarwise.
- (3) Neither Wright nor Kaiser had the power under their prime letter contract to let out any subcontracts unless the same were approved by the contracting officer of the United States Air Force and the Murray letter subcontracts here involved were so approved.
- (4) (a) The United States Air Force representative (i) inspects goods produced by Murray under each subcontract at the Murray plant in Detroit, (ii) audits Murray costs data and approves Murray's requests for partial payments, (iii) participates in Murray's negotiations with the prime contractors on price redetermination and after a redetermined price with the prime contractor is agreed upon the contracting officer assigned to the prime contract approves of such redetermined prices with Murray before they become effective; (iv) approves, through the conracting officer at Murray, any overtime authorized or paid by Murray, and (v) reviews Murray's accounting procedure and periodically spot-checks its figures.
- (b) In addition thereto the general accounting officer of the United States Government reviews and proposes revisions to Murray's accounting procedure to conform with

the Government requirements and periodically reviews and spot-checks Murray's books in connection with Air Force supervision of prime contracts.

- (c) All of the foregoing in this paragraph is done to effect a clearance for the prime contractor with the Air Force under his prime contract insofar as the goods are produced for use under the prime contracts and payments by the prime contractor to the subcontractor are an element of cost to be cleared by the Air Force when billed therefor by the prime contractor.
- (d) Cherwise, the Air Force has no direct supervision over the subcontractor with respect to the subcontractor's costs.
- (5) Murray has not billed nor been directly paid or reimbursed for the specific amount of 1952 personal property taxes paid under protest involved in this suit. It has included the amount of such taxes paid by it as an element of burden in computing costs submitted for forward price redetermination and retrospectively as to goods completed and delivered prior to the date of the first price redeterminations as set forth hereinbelow. The redetermined prices involved a matter of negotiation and trading, give and take, on all cost items, of which this is one of many, and the price so determined in each instance was not that specifically requested by Murray.

To the extent such of Murray's redetermined prices were paid by the prime contractor on final deliveries to Wright and Kaiser, the prime contractors, Wright and Kaiser included such payments as a part of their costs submitted to the United States Air Force under their respective prime contracts. To the extent Wright has completed engines covering such item of costs, such costs were likewise included in Wright's requests for price redetermination, which like Murray's requests were not necessatily at all times allowed in full but were settled by negotiation and compromise. Otherwise, Murray's redetermined prices billed to Wright were a part of costs against which Wright obtained partial payments. In case of Kaiser such costs

were paid as a part of its costs under its cost plus fixed fee contract.

- (6) (a) Price redeterminations were made in the
 - (i) Murray-Wright definite subcontract-

first—in March and April, 1953 retroactively to the beginning of the letter subcontract.

second—in June, 1953—forward price redetermination,

third—in September, 1953—forward price redetermination;

(ii) Murray-Kaiser definitive subcontract—

August, 1953—retroactively to the beginning of the letter subcontract and forward thereafter;

- (iii). Murray had no price redetermination under either the Wright or Kaiser contract prior to January 1, 1952.
- (b) (i) The initial price redetermination under the Wright prime contract here involved has been negotiated but has not yet been definitized in writing in any binding signed agreement.
 - (ii) The Kaiser prime contract was terminated in 1953 at least in part, and termination settlement the reunder has not yet been finally concluded.
- (7) Letter contracts generally—and in particular the prime letter contracts with Wright and Kaiser and the sub-letter contracts with Murray—only permit the contractor to obtain reimbursement of his costs to the extent set forth therein and do not provide any profit to him until prices have been agreed upon and set forth in a definitive contract, the first prices being retroactive to the beginning of performance under the letter contract.
- (8) Final inspection by and delivery to the United States Government of the aircraft by the prime contractor—Kaiser—under definitive prime contracts is made at the air field at Willow Run, Michigan, and final inspection by

and delivery of engines to the United States Government by Wright under its prime contracts f.o.b. carrier's equipment at the plant or plants of contractors.

- (9) (a) The definitive prime contract with Wright was approved and made effective April 10, 1952. The Wright-Murray subcontract was approved and became effective January 17, 1952.
- (b) The definitive prime contract with Kaiser was approved and made effective May 16, 1952. The Kaiser-Murray subcontract was approved and became effective April 28, 1952.
- (10) Any regulation of the United States Government or of any agency or department thereof may be used and referred to by either party as part of the record of this consolidated action and shall have the same force and effect as though admitted in evidence.
 - (11) The facts stipulated herein are agreed facts without agreement as to the materiality thereof, which question of materiality, if raised, shall be determined by the Court.

Butzel, Eaman, Long, Gust & Kennedy,

By: Victor W. Klein,

Attorneys for Plaintiff,
The Murray Corporation
of America;

Paul T. Dwyer,
By: Julius C. Pliskow,
Attorney for Defendant,
City of Detroit;

Gerald K. O'Brien,
By: Hobart Taylor, Jr.,
Attorney for Defendant,
County of Wayne.

Dated: March 5, 1954.

STIPULATION No. 3

(Filed March 9, 1954)

It is stipulated and agreed by and between the parties hereto, by their respective counsel, as follows:

That the letter prime contracts and the letter subcontracts and the definitive contracts thereafter executed by the United States Air Force and Wright, Kaiser and Murray, respectively, (a) were negotiated by Contracting Officers of the Air Force who were duly appointed as such and that appropriate authority so to do had been delegated to them in accordance with the Armed Services Procurement Act of 1947 and regulations promulgated thereunder, and (b) such determinations and findings as were required by said statute or regulations thereunder were made at or prior to the time of the execution of such contracts.

Defendant reserves the right to question whether the terms of such contracts, including the partial payment clause, could lawfully be incorporated therein.

Butzel, Eaman, Long, Gust & Kennedy,

By: Victor W. Klein, Attorneys for Plaintiff,

The Murray Corporation of America;

Julius C. Pliskow,
Assistant Corporation
Counsel.

Attorney for Defendant, City of Detroit;

Hobart Taylor, Jr.,
Attorney for Defendant.
County of Wayne.

Dated: March 8, 1954.

AFFIDAVIT OF MEYER H. DREETY

(Filed March 9, 1954)

State of Michigan, ... County of Wayne—ss.

MEYER H. DREETY, being first duly sworn, deposes and says and does hereby certify that:

- He is Attorney Advisor in the office of the Staff Judge Advocate, Headquarters, Air Materiel Command, Department of the Air Force of the United States of America; that in such capacity he has access to and has examined the contract files of the Procurement Division of the Air Force, and from such examination knows of his own personal knowledge which documents constituted the entire Letter Prime Contract between Kaiser Manufacturing Corporation and the Department of the Air Force of the United States of America, No. AF 33(038)-18481. dated December 20, 1950, and all amendments thereto, in full force and effect on January 1, 1952, and the Letter Prime Contract between Wright Aeronautical Corporation and the Department of the Air Force of the United States of America, No. AF 33(038)-18132, dated December 12. 1950, and all amendments thereto, in full force and effect on January 1, 1952;
- (b) The documents attached to and described in the certificate of Ruth I. Sawyer, Chief Contract File Section, Procurement Support Branch, Procurement Division of the Department of the Air Force of the United States of America, dated October 30, 1953, Exhibit 1 of the volume of plaintiff's exhibits referred to and incorporated in the affidavit of Mark I. Sammon in support of the Motion for Summary Judgment in the above entitled cause, plus Amendment 5 thereto dated April 6, 1951, a photostatic copy of which is hereto attached, constitute the entire

Letter Prime Contract AF 33(038)-18481, between the Department of the Air Force of the United States of America and Kaiser Manufacturing Corporation, in full force and effect on January 1, 1952, and that there were no other modifications, amendments or supplements thereto which were in effect as of that time;

The documents attached to and described in the certificate of Ruth I. Sawyer, Chief Contract File Section, Procurement Support Branch, Procurement Division of the Department of the Air Force of the United States of America, dated October 30, 1953, Exhibit 4 of the volume of plaintiff exhibits referred to and incorporated in the affidavit of Mark I. Sammon in support of the Motion for Summary Judgment in the above entitled cause, plus the provisions of Basic Agreement No. 1, AF 33(038)-4005, which was incorporated therein by reference and which is attached to the stipulation of the parties dated February 19, 1954, constitute the entire Letter Prime Contract AF 33(038)-18132, between the Department of the Air Force of the United States of America and Wright Aeronautical Corporation, in full force and effect on January 1, 1952, and that there were no other modifications, amendments or supplements thereto which were in effect as of that time.

Further deponent saith not.

.(s) Meyer H. Dreety.

Subscribed and sworn to before me this 4th day of March, 1954.

(s) Beatrice V. Cabanaw, Notary Public, Wayne County, Michigan. My commission expires February 10, 1957.

HEADQUARTERS AIR MATERIAL COMMAND

Wright-Patterson Air Force Base Dayton, Ohio 6 April 1951

Subject: Letter Contract dated 20 December 1950 designated AF 33(038)-18481

To: Kaiser-Frazer Corporation
Willow Run
Detroit, Michigan

Amendment No. 5 to subject Letter Contract

- 2. It is now desired to amend subject Letter Contract in the following respects:
 - a. By increasing the amount authorized to be expended or obligated as set forth in paragraph 5 from \$10,000,000.00 to \$25,000,000.00, an increase of \$15,000,000.00.
 - b. Except insofar as subject Letter Contract may have been terminated, it is now desired to extend the expiration date to 30 June 1951. Such date is hereby extended accordingly.

STIPULATION No. 4

(Filed March 10, 1954)

SUMMARY OF DEPOSITION OF MARK I. SAMMON

- (1) The letters, documents and agreements which constituted the entire letter subcontract between Murray and Kaiser as at January 1, 1952, are those set out in Exhibits 2-A, 2-B and 2-C of Volume of Plaintiff's Exhibits referred to and incorporated in Sammon's affidavit. (R. 5 & 6.) The letter of February 19, 1951, is a proposal directed by Kaiser to Murray, "Deposition Exhibit 1" (P 10) and Murray's reply thereto is a letter dated March 19, 1951, "Deposition Exhibit 2" (R. 12). Both of these letters were superseded by the letter contract of March 23, 1951, Exhibit 2-A (R. 12-14).
- (2) The letters, documents and agreements which constituted the entire letter subcontract between Murray and Wright as at January 1, 1952 are those set out in Exhibits 5-A and 5-B of the Volume of Plaintiff's Exhibits (R. 6 and 7).
- (3) The analysis of costs, in so far as they bear upon Murray's requests for partial payments, which are referred to as Exhibits 7 and 8 in the Volume of Plaintiff's Exhibits, includes—
 - (a) Such work summarized individually by factory work orders as the following: Liaison work, machinery movement, time study, tool engineering, plant layout, planning and scheduling, engineering of portable tools, repair and maintenance of motors, engineering records, crib attendants, templates, traveling expenses, depreciation and taxes, and blueprints.
 - (b) As Murray progressed, production by far exceeded tooling, but in the early stages tooling naturally was more costly than the production. There were costs

which Murray considered applicable to production prior to January 1, 1952, which were contained in Murray's request for partial payments prior to that date and upon which Murray received partial payments prior to that date (R. 23).

There were certain intangible items, costs for which were incurred by Murray, in make-ready preparation used as an element of costs in seeking partial payments. However these intangible items were excluded from the assessment figure of \$2.043,383.00 consisting of raw materials purchased, tooling for contracts, in-process inventory and unbilled shipments, more particularly listed in Exhibit A attached to Complaint (R.28).

Murray also had a tool division and has always made and sold tools (R. 31). Murray had a substantial amount of material on hand on assessment date, January 1, 1952, for use in the production end of the operation under the two subcontracts as well as the tooling operation, which was a product of Murray (R. 31).

In respect to the tools made and completed by Murray under the subcontracts prior to January 1, 1952, the contract therefor is with the respective prime contractors, but the tools are produced, tried out, inspected and then are turned over in effect to Murray to hold for the Government and produce products for them. That includes a Government inspection. Such tools were not delivered to the prime contractor. There was actually no delivery to any one other than inspection and acceptance of the billing for a completed tool by Murray to the prime contractor and in turn the prime contractor to the Government (R. 33).

- (4) The complete breakdown of items included in the assessed personal property in question as of January 1, 1952 is set forth in Exhibit A attached to the Complaint (R. 37-38).
- (5) No notice was given to creditors of Murray of the claimed passage of title to the United States after the making of the first partial payment. Murray has no other creditors than the normal trade creditors and Murray gave

no notice to them, seeing no need for it. It was not a matter of Murray's practice to advise vendors of what Murray was doing after it made purchases from them (R. 38).

- (6) Murray executed and delivered to the United States no written documents of conveyance following Murray's request for and receipt of partial payments, it being Murray's position that there was a provision for the vesting of title in the Letter Contracts, Exhibits 2-A, 2-B and 2-C and Exhibits 5-A and 5-B (R. 38 and 39).
- (7) Murray made no changes in its accounting procedure or methods pertaining to the personal property here in question after the receipt of a partial payment than were in effect before the partial payment. Sammon stated that the reason for this was that from the very beginning Murray intended to have a partial payment clause in their contract and designed its accounting treatment from the very beginning as though it were operating under existing partial payment clauses (R. 42 and 54). Upon the purchase of material for either of these subcontracts in question, Murray recorded the amount of the cost thereof in a defense contract control account, Account No. 1280 (R. 48 and 54), the 1200 numbers being Accounts Receivable and the 1300 numbers being Inventory numbers (R. 51). Since Murray was going to operate under a partial payment clause before its fiscal year was over, it therefore shortcircuited the first step of putting the amount of such purchases in Inventory and then upon receipt of partial payment transferring it to the Account 1280, which is known as "Defense Contracts Receivable-Control" (R. 49, 51 and 521.

There were some materials which appeared in this 1280 account which were purchased on other defense contracts to which no claim of Government title was subsequently lodged (R. 52). The majority of those contracts were small, about \$100,000,00 altogether, and Murray kept these purchases the same way as it did the Wright-Kaiser purchase (R. 57). These contracts were not similar in nature to the Wright-Kaiser subcontracts and did not provide for partial payment and transfer of title (R. 57).

In the published annual report of Murray as of August 31, 1951, the balance sheet does not make specific reference to the sum of \$125,000.00 as a segregated item of Accounts Receivable, that being the approximate amount of the total cost submitted by Murray in its first two requests for partial payment under its subcontracts, being Exhibits 7 and 8, in the Volume of Plaintiff's Exhibits (R. 62-64). These partial payment requests were submitted before but payments thereupon were not received until after August 31, 1951.

Sammon stated that the amount of \$25,000.00 (covered by the first partial payment request, Exhibit 7) would be considered a small item in a balance sheet the size of Murray's and would not be segregated (R. 62).

The accounting treatment Murray accorded the whole Government contract situation in its 1952 Annual Report as of August 31, 1952 was as follows: that Murray combined all the amounts that it had expended, less what it had received in the form of partial payments, and classified the whole net amount as a separate item on its balance sheet (Exhibit 12 of Plaintiff's Volume of Exhibits). After counseling with Murray's public accountants, this item was designated "Total Recoverable Amounts Applicable to Government Contracts" (R. 39).

(8) Murray aircraft operations are entirely separated from its automotive and other type operations. The raw stock in case of aircraft is aluminum, and the raw stock in non-aircraft operations is steel (R. 41). Murray set up a separate division of the Company under separate supervision that manufactured aircraft products only. Those were segregated in various areas, in some cases complete buildings, and in some cases floors; in other cases very definitely divided sections of a floor. The material was tagged, labeled and segregated by contract number bearing code references to each contract, and this was true on assessment date, January 1, 1952, (the date of January 1, 1953 appearing in the last paragraph on Page 17 of Sammon's affidavit is a typographical error and should be read as January 1, 1952) (R. 41-2).

No action or treatment of any different nature in handling or dealing with the physical property in question was made after receipt of partial payments by Murray than obtained before receipt of such partial payments. The reason for that was that from the beginning of these two contracts Murray intended to have a partial payment clause and saw no point in effecting one treatment and then after receipt of partial payment having a different method of treatment (R. 75).

(9) (Omitted.)

- (10) None of the material acquired by Murray for either of these two subcontracts was used for any other purpose than performance of the Murray-Wright or Murray-Kaiser contracts, except in a few isolated cases where Murray acquired material, which was usable by another prime contractor of the Government, and where at the direction of the Government Murray was asked to transfer such material to such other contractor. Sammon stated that according to the records of the Company no such material was ever used by Murray for its own individual corporate operations (R. 86-9). (For method of handling transfer at Government direction to other war contractor, see Deposition Exhibits 5, 6, 7 and 8. For entries on Company books, see R. 125-6).
- (11) and (12) Where material was rejected, it was either re-worked and re-shipped to the prime contractor or was scrapped, depending on the cost of this re-working. Goods returned for correction were usually re-worked and re-shipped to the prime contractor, unless the cost of such work was excessive in which case it was scrapped.

On the basis of that, all of the spoiled work automatically fell into one of two classes (1) scrap, or (2) good (R. 98-9).

All scrap generated in the performance of the contract was completely segregated and disposed of in accordance with subsection D of the partial payment clause, as appears on page 6 of Mr. Sammon's affidavit and was disposed of in the manner there provided, to wit, "upon terms approved by the contracting officer" (R, 99).

Further, the proceeds received by Murray to the extent that such price and proceeds do not exceed the unliquidated balance of the partial payments, were paid or credited to the Government as the contracting officer directed (R. 99).

When work was rejected and then worked over again by Murray in an effort to make it conform with requirements, it was charged as part of Murray's costs under the particular subcontract, even if the item was re-worked, and then was eventually scrapped. This cost would all be included as part of Murray's cost on other items eventually produced and delivered under the subcontract (R. 160). (For vouchers showing sale of scrap by Murray as aforesaid, see Deposition Exhibits 9 and 10 and R. 129-132).

(13) Murray has not billed nor been directly paid or reimbursed for the specific amount of 1952 personal property taxes paid under protest involved in this suit. It has included the amount of such taxes paid by it as an element of burden in computing costs submitted for forward price redetermination and retrospectively as to goods completed and delivered prior to the date of the first price redeterminations as set forth hereinbelow. The redetermined prices involved a matter of negotiation and trading, give and take, on all cost items, of which this is one of many, and the price so determined in each instance was not that specifically requested by Murray. (Paragraph 5, Page 3, Stipulation No. 2; See also R. 101-117.)

Murray made no assignment of its claim for tax refund to any one (R. 110).

If Murray is successful in this suit and obtains a refund of the taxes in question, Mr. Sammon stated that it is the Company's intention to re-state its costs in the period in which such costs were applicable and to repay the portion of the negotiated psice relating to such taxes (R. 106). In price redetermination the exact amount of taxes was not specifically included in a negotiated and redetermined price (R. 110, 112). Mr. Sammon further stated that the Company in a policy intra-Company lettersigned by the top officer stated that the Company intended to carry out such a program (R. 114), but this letter was

not communicated to the prime contractors (R. 114). However, Sammon stated that it is a point on which the Government in informal discussions had been apprised and it was an understanding at that time in the discussions that if Murray was going to be able to include the cost of the taxes in negotiating price redetermination Murray would retroactively adjust its costs to reflect any refund it might get in the way of return of the protested taxes (R. 115). The letter from the Company officials was in writing, but the discussions with the Government people were verbal (R. 115).

- If, however, either of the subcontracts was completed prior to such refund being obtained by Murray, and Murray did not repay to the prime contractors the proportion of the taxes which it had theretofore obtained through price redetermination, the profits of Murray on war contracts would only be renegotiated by the Government on an overall Company-wide basis, considering Murray's profits on all Government contracts, and if such over-all profits were not excessive on such a basis Murray's profits would not be renegotiated for the period in question, in which event there would be no refund to the prime contractor and no subsequent refund to the Government (R. 108-110).
- (14) On shipments of material under the Wright subcontract to Wright at New Jersey, shipments by Murray were handled on the type of bill of lading and invoice in the form of deposition Exhibits 3 and 4. There were no hills of lading used on shipments to Kaiser, such shipments being made by Murray trucks to the Willow Run Plant (R. 117). The invoice (Deposition Exhibit 3) bears, among other things, the inspection stamp of the United States Air Force (R. 121).

The foregoing summary of the deposition of Mark I. Sammon is hereby stipulated as agreed facts for submission to the Court in this consolidated action upon which a decision may be based. The parties hereto reserve the right to object to the materiality of any portions of the foregoing or of any other testimony set forth in said deposition. It is further stipulated that all parties hereto re-

serve the right to refer to and rely upon any additional portions of said deposition not in conflict with these stipulated facts which they deem appropriate, subject to the ruling of the Court, should any of the other parties object thereto.

Butzel, Eaman, Long Gust & Kennedy,
By Victor W. Klein,
Attorneys for Plaintiff, The
Murray Corporation of
America:

Paul T. Dwyer,
Corporation Counsel,
By Julius C. Pliskow,
Attorney for Defendant,
City of Detroit,

Hobart Taylor Jr.,
Attorney for Defendant,
County of Wayne.

Dated: March 10, 1954.

AMENDMENTS TO SPECIAL DEFENSES OF DEFENDANTS

(Filed March 11, 1954)

Now come the defendants, City of Detroit, a Michigan municipal corporation, and County of Wayne, a Michigan municipal constitutional body corporate, by their undersigned attorneys, and submit for filing, service and consideration the following amendments to defendants' affirmative defenses as more particularly set forth in defendants' answers.

1. The contracting officers of the Government were without power or authority to delegate to the prime contractors power to authorize Murray Corporation of Amer-

ica to act as agents of the Government in the purchase of materials, or to convey title to such goods to the United states, and, therefore, title to said goods did not vest in the United States on January 1, 1952, or prior thereto.

- 2.. Plaintiff has no legal right to maintain this action because plaintiff has been or may be reimbursed by its prime contractors for moneys forming the subject matter of plaintiff's claim in this suit.
- 3. Plaintiff is estopped to deny that it has already or may yet be fully reimbursed by its prime contractors, Kaiser & Wright respectively, for its 1952 taxes.

Paul T Dwyer, Corporation Counsel, Julius C. Pliskow, Asst. Corp. Counsel, Julius C. Pliskow,

Assistant Corporation Counsel,
Attorneys for Defendant,
City of Detroit,
301 City Hall,
Detroit 26, Michigan,

Gerald K. O'Brien,
Prosecuting Attorney,
Hobart Taylor, Jr.,
Asst. Prosecuting Atty.,

By Hobart Taylor Jr.,
Assistant Prosecuting Attorney,
Attorneys for Defendant,
County of Wayne,
508 Wayne County Building,
Detroit 26, Michigan

Dated: March 11, 1954.

103

1952

Defendant City's Exhibit 3.

DEFENDANT CITY'S EXHIBIT 3

(Filed March 11, 1954)

CITY OF DETROIT PERSONAL PROPERTY ASSESSMENT ROLL

WARD:

True and Lawful Assess-Accepted Business and . Assessment . .. ment Determined by the Owner & Taxwayer Sales Tax Statement . 01. hem Field Appraiser . State Tax Commission 1952 Not Accepted Number 1951 Filed Line Number Address Assessed Subject to Prior Rights of Federal Government 11,155,750 11,200,000 Murray Corp of America 7 Auto Feb 15 B. of R. 1952 Pet. No. 825 10,296,000 C Body 7700 Russell Placed at 12,183,180 119259 12,183,180 Detroit 11, Mich Accepted Reg #7821 R. Howey Board of Assessors

STATE TAX COMMISSION

Certificate of Review of Assessments

State of Michigan, County of Wayne—ss.

This is to certify that Louis M. Nims, Chairman, Clarence E. Paddock and Ben E. Goldman, Commissioners of the State Tax Commission of the State of Michigan, acting under authority of law, an order having been made and notice of hearing published and given as required by law, did in pursuance thereof on the 22nd day of July A. D. 1952 and on the 7th, 8th, 9th day of October A. D. 1952, review the assessments made by the Assessors of the City of Detroit, County of Wayne and State of Michigan, and reviewed by the regularly constituted Board of Review of said City, and upon such review have changed individual assessments upon the assessment roll to which this certificate is attached as shown in the column headed "True and lawful assessment as determined by Board of State Tax Commissioners."

Signed this 28th day of October, A. D. 1952.

L. M. Nims,

Chairman, State Tax Commission.

EXCERPT OF TRANSCRIPT OF PROCEEDINGS ON MOTION FOR SUMMARY JUDGMENT

(Filed March 11, 1954)

(Figures in parentheses refer to pages of the original transcript)

(4) Detroit, Michigan, Thursday, March 11, 1954

Thursday, March 11, 1954. 9:30 o'clock A. M.

The Clerk of the Court: Murray Corporation of America vs. City of Detroit and County of Wayne; Motion for Summary judgment.

Excerpt of Transcript of Proceedings on Motion for Summary Judgment

The Court: All right, Mr. Owen. ...

Mr. Owen: May it please the Court, I have the pleasure of presenting and moving for the admission, special admission, of Mr. Erwin A. Goldstein, a member in good standing of the Minnesota Bar, and Mr. Lyle M. Turner, a member in good standing of the Missouri Bar, who appear in this case on behalf of the Government.

The Court: All right, It is a pleasure, gentlemen, to.

admit you for the purpose of this matter,...

Mr. Turner: Thank you. Mr. Goldstein: Thank you.

The Court: All right, Mr. Klein.

(A 1952 Personal Property Assessment Roll of the City of Detroit was thereupon marked Defendants' Exhibit No. 3.)

Mr. Klein: If the Court please, this is a consolidated Civil Action No. 12108, being a consolidation of (5) Civil

Actions 12108, 12482 and 12483.

The plaintiff is The Murray Corporation of America, a Delaware corporation, having a place of business in the City of Detroit, in the District. The defendants are the City of Detroit, a Michigan municipal corporation, and the County of Wayne, a Michigan constitutional body corporate, both under the laws of the State of Michigan.

That is stipulated, Mr. Taylor and Mr. Pliskow, is it:

not?

Mr. Pliskow: Yes.

Mr. Taylor: Yes, that is correct.

Mr. Klein: Now, there are certain procedural matters we thought we should clear up before, we otherwise proceed, so as to get the case submitted appropriately.

The Court: Aren't you going to put the Government

in this picture? You have everybody else in here.

Mr Klein: I was wing to state that later.

The Court: All right

Mr. Klein: The Government has intervened, filed a petition for intervention, and this Court entered an Order allowing the Government to intervene because of its very

substantial interest in this controversy and the general subject of it, in general.

I intended to discuss that later, but I will mention it

now, sir.

(6) Now, to clear the procedural matters so that we may get this matter properly submitted, the defendant City of Detroit has asked me to stipulate—and I am willing to do so—that the document which has been marked Defendant's Exhibit 3, entitled "City of Detroit Personal Property Assessment Roll, Page 66", and particularly referring to item 639 in respect to The Murray Corporation, and the year is 1952, and I do so stipulate that this document, Exhibit 3, may be admitted as Defendants' Exhibit 3. And, I assume Mr. Taylor for the County does likewise.

Mr. Taylor: 1 do.

The Court: All right, it may be admitted.

Mr. Klein: I further wish to advise the Court that yesterday evening I was advised by counsel for the defendants that they proposed to amend their Answer further by filing a document which is entitled, "Amendments to Special Defenses of the Defendants." which I assume was filed this morning.

Mr. Taylor: That is right.

Mr. Klein: They are in the nature of legal defenses. One, as to the question of real party in interest; and, two, relating to the power of the contracting officer of the Air Corps or Air Force of the United States to empower the prime contractor to make certain provisions in the subcontracts. They speak for themselves and I am not going (7) to attempt to summarize them.

In view of the urgency that this matter be promptly determined, and since the special defenses raise no question of fact, we are willing that it be filed now and without

asking for any further delay.

The Court: All right.

Mr. Klein: If it may be filed.

's e next item is a stipulation, which we have marked,. Stipulation No. 4." It relates to the deposition of Mark I. Sammon of The Murray Corporation, whose affidavit was the principal affidavit attached to Murray's Motion

for Summary Judgment, and at the request of counsel for the City we have summarized certain pertinent facts which we agree are facts as testified by Mr. Sammon, reserving the right to object to the materiality of these facts, and reserving the right by all parties to refer to and rely upon any additional points of Sammon's depositions not in conflict with the stipulated facts, subject to the ruling of the Court. And, with the Court's approval—

The Court (interposing): Well, is that a stipulation or

isn't it a stipulation?

Mr. Klein: It is, sir.

The Court: There are so many stipulations to it, what value is it going to have as a stipulation?

Mr. Klein: It has this value, sir-

(8) The Court (interposing): Either you are stipulating to something, or you are not. Now, is it a stipulation between the parties?

Mr. Klein: Yes, it is.

Mr. Pliskow: That is our understanding, that it is a stipulation of agreed facts.

The Court: All right.

Mr. Klein: It is a stipulation.
The Court: Has it been filed yet?

Mr. Klein: It is being filed. (Handing document to the Clerk of the Court.)

The Court: All right.

Mr. Klein: Now, the next item we wish cleared, if the Court please, is that the parties stipulate that the Charter of the City of Detroit shall be deemed to be in evidence as though it were introduced here, and either party may refer to it and rely upon it.

Is that correct, gentlemen?

Mr. Pliskow: We are agreeable, your Honor, yes.

Mr. Klein: The next item refers to certain corrections, mostly typographical errors, in Mr. Sammons' affidavit.

I don't know if you have that Motion for Summary Judgment before you, but it might help if I could point out these corrections to the Court, unless you wish to follow it (9) by the transcript.

The Court: Go ahead and let us hear them.

Mr. Klein: On Page 17 of Mr. Sammon's affidavit, the last paragraph on the page, the date of "January 1, 1953," appears, and it should be "January 1, 1952."

That is stipulated, gentlemen?

Mr. Pliskow: It is.

Mr. Klein: Then I would like to call your Honor's attention to certain corrections which we have already stipulated to in Paragraph 7 of Stipulation No. 1, making certain corrections in Mr. Sammon's affidavit, particularly on Page 13-A, but they are on a few other pages; but a reference to Paragraph 7 of Stipulation 1 would, if done before Your Honor reads Mr. Sammon's affidavit, avoid confusion.

The next item I would like to call your Honor's attention to is a typographical error appearing in Mr. Sammon's affidavit in four places, two on page 9 of Mr. Sammon's affidavit and two on Page 10. The words "office restrictions" appears. That should be "office instructions": It appears in four places on Pages 9 and 10 of Sammon's, affidavit.

That is agreed to, gentlemen?

Mr. Pliskow: Yes.

Mr. Taylor: Yes, that is correct.

Mr. Klein: Now, subject to those corrections, then, (10) your Honor, and the introduction of these stipulations. I would like to advise the Court that this matter was initially brought on for hearing by plaintiff filing a Motion for Summary Judgment, to which motion there was appended the affidavit of Mark I. Sammon, the affidavit of E. R. Jones, the affidavit of Nicholas Dykstra. In addition thereto, there was filed at the same time a black-covered bound volume marked "Plaintiff's Exhibits Referred to and Incorporated in the Affidavit of Mark I. Sammon in the Motion for Summary Judgment."

The motion was initially set for hearing on February 5. After consultation with counsel for the defendants, the motion was continued on several various occasions, with the view of our getting together with counsel for the de-

Excerpt of Transcript of Proceedings on Motion for Summary Judgment

fendants, exhibiting to them any papers and documents on the subject in which they were interested, exposing our witnesses to them, having representatives of the United States Air Force come to Detroit to answer questions, and then arranging a meeting at Wright Field, which they attended—that is, counsel for the defendants—so that they could interview the negotiators of the prime contracts and look through the Government files, all to the end that the parties could stipulate as to certain facts, some of which the materiality may be in question but they are facts nevertheless, undisputed facts.

(11) So that we could submit to your Honor this case on

the following:

. The Complaints in the three consolidated cases;

Amendment filed today;

The Stipulation and Order of Consolidation;

The Motion of the United States of America and the

Order of the Court allowing intervention;

The affidavits attached to the Motion for Summary Judgment of Mark I. Sammon, E. R. Jones, Nicholas Dykstra;

.. The Affidavit of M. II. Dreety-

The Court (interposing): What you are doing, Mr. Klein, you are submitting this case on the pleadings the same as you would in any other case. What is the sense of wasting a lot of time?

Let us get into the meat of this argument. This is being

submitted on the pleadings, isn't it?

Mr. Klein: No.

The Court: Why enumerate them?

Mr. Klein: Your Honor, I would be-

The Court (interposing): I can't go outside the file, can !?

Mr. Klein: No. But if you would permit me two min-

utes, I think-

The Court (interposing): Let us not take too many (12) "two minutes" in dedicating our time to an argument such as this.

. Mr. Klein: Well, this is not an argument.

The Court: Well, it is not anything that is of any concern to me. I am the one that is going to determine what I find in the file and whatever briefs I have.

Mr. Klein: If I could just-

The Court (interposing): Go ahead.

Mr. Klein (continuing with previous statement): The volume of exhibits filed with the Motion for Summary. Judgment:

Stipulation No. 1:

Stipulation No. 2;

Stipulation No.3;

Stipulation No. 4;

The Deposition of Alfred Massnick: ·

The exhibits that have been prepared.

We are prepared, your Honor,-- .

The Court (interposing): You mentioned this, I think. Is this evidence?

Mr. Klein: Yes, sir, that is evidence.

Now, we ask defendants whether on those papers there is any genuine issue as to any material fact. We say there is none, and we understand that they are prepared to (13) say there is none.

Is that correct, Mr. Pliskow?

Mr. Pliskow: Well, I will answer, if I may, in a short statement following Mr. Klein's statement.

The Court: All right.

Mr. Klein: And we also understand that counsel for the defendants join with us in the request to this Court that the Court finally determine this matter on the papers I have just enumerated and enter a judgment either for the plaintiff or a judgment for the defendants. In other words, this would be a final and complete submission of the case,

At this point, if they will-

The Court (interposing): You just offered a pleading here that seems to be in conflict with what you say. You say the defense here has raised a question as to real party in interest?

Mr. Klein: But there are no facts in dispute in regard to it. All the facts relating to that subject are before

Excerpt of Transcript of Proceedings on Motion for Summary Judgment

the Court. It is purely a question of law. There are no genuine issues of a material fact; only a question of law remains for the Court.

Mr. Pliskow: If I may make a short statement:

It is the position of the defendant City of Detroit that we are appearing here this morning before your Honor on the Motion for Summary Judgment, in which motion (14) your Honor will consider, as you have mentioned, the contents of the entire file, including the matters filed that morning.

We have patterned our position on the case of Commercial Credit Corporation v. California Shipbuilding Company, reported in 71 Fed. 2d, at page 936, in which a course of procedure such as counsel_indicated, and which

we are prepared to follow, was laid down.

There the plaintiff made a Motion for Summary Judgment. The matter was submitted; I believe some stipulations of fact were filed, and the Court made a final determination, and according to the procedure followed, the Court is free to make a determination, applying the law to the facts that your Honor finds in the file for either one of the parties and, of course, as we will request, we will ask for a judgment for the defendants.

So on behalf of the City of Detroit, we take the position that there is no genuine issue of fact and that your Honor may proceed, after hearing arguments, considering the Briefs, make a decision applying the law to what you find

before you.

The Court: All right.

Mr. Taylor: May it please the Court, the County concurs in the position of the City of Detroit.

The Court: All right.

OPINION

(Filed June 23, 1955)

The Murray Corporation, plaintiff herein, brings this action to recover ad valorem personal property taxes assessed by the City of Detroit, County of Wayne, "upon personal property in the possession of The Murray Corporation, said taxes having been paid by the plaintiff under protest. The amount assessed by the City was \$67,714.96, and that by the County was \$12,572.66. The United States of America was permitted to intervene because of the fact that it claimed ownership of the personal property on which the assessments were made. The personal property so taxed was in the possession of the plaintiff under letter subcontracts, under prime letter contracts, for the manufacture of parts and components for aircraft for the United States Air Force for defense purposes.

The plaintiff has moved for summary judgment in its favor, and at the hearing of this motion it was agreed among the parties that there was no genuine issue of any material fact, and that a summary judgment in favor of the plaintiff, or in favor of the defendants would be in order.

The Court is not unmindful of the effects of its decision in this matter. The Court has been advised that there are many actions in this geographical area that have been commenced, or are about to be commenced, involving the issue which we are here called upon to resolve, and that the aggregate of taxes involved may well be in the neighborhood of two million dollars.

The parties to this suit have presented oral arguments followed by the submission of successive briefs totaling seven in number. As previously stated, the factual picture here presented in undisputed—not so, however, as to its legal significance. The plaintiff is a letter subcontractor of the Kaiser Manufacturing Corporation to which a letter prime contract between the United States Government and

the Kaiser-Frazer Corporation was assigned by mutual consent. The letter subcontract between the Kaiser Manufacturing Corporation and the plaintiff covered the manufacture of specified parts and assemblies required under the prime contract for the United States Air Force for national defense. This letter subcontract and its amendments were approved by a Contracting Officer of the United States Air Force in accordance with the requirements of the letter prime contract. Included in the letter subcontract, by amendment, was the Partial Payment Clause which is the nub of this controversy. The following is the text of said clause:

- "11. Partial payments—Partial payments, which are hereby defined as payments prior to delivery, on work in progress for the Government under this contract, may be made upon the following terms and conditions.
- The Contracting Officer may, from time to . (a) time, authorize partial payments to the Murray Corporation of America (hereinafter called the Contractor') upon property acquired or produced by it for the performance of this contract: Provided, that such partial payments shall not exceed 90 percent of the cost to the Contractor of the property upon which. payment is made, which cost shall be determined from evidence submitted by the Contractor and which must be such as is satisfactory to the Contracting Officer: Provided further, that in no eyent shall the total of unliquidated partial payments (see (c) below) and of unliquidated partial payments, if any, made under this contract, exceed 80 percent of the contract price of supplies still to be delivered.
- "(b) I pon the making of any partial payment under this contract, title to all parts, materials, inventories, work in process and non-durable tools theretofore acquired or produced by the Contractor for the performance of this contract, and properly chargeable thereto under sound accounting practice, shall forthwith vest in the Government; and title to all like

property thereafter acquired or produced by the Contractor for the performance of this contract and properly chargeable thereto as aforesaid shall vest in the Government forthwith upon said acquisition or production; Provided, that nothing herein shall deprive the Contractor of any further partial or final payments due or to become due hereunder; or relieve the Contractor, Kaiser-Frazer Corporation, or the Government of any of their respective rights or obligations under this contract.

- "(c) In making payment for the supplies furnished hereunder, there shall be deducted from the contract price therefor a proportionate amount of the partial payments theretofore made to the Contractor, under the authority herein contained.
- "(d) It is recognized that property (including without limitation completed supplies, spare parts. drawings, information, partially completed supplies, work in process, materials, fabricated parts and other things called for herein) title to which is or may hereafter become vested in the Government pursuantto this Article will from time to time he used by or put in the care, custody or possession of the Contractor in connection with the performance of this contract. The Contractor, either before or after receipt of notice of termination at the option of the Government, may acquire or dispose of property to which title is vested in the Government under this Article, upon terms approved by the Contracting Officer, provided, that, after, receipt of notice of termination, any such property that is a part of termination inventory may be acquired or disposed of only in accordance with the provisions of the termination article of this contract and applicable laws and regulations. The agreed price (in case of acquisition by the centractor). or the proceeds received by the Contractor (in case of any other disposition), shall, to the extent that such price and proceeds do not exceed the unliquidated balance of partial payments hereunder, be paid or credited to the Government as the Contracting Dicer

shall direct; and such unliquidated balance shall be reduced accordingly. Current production scrap may be sold by the Contractor without approval of the Contracting Officer but the proceeds will be applied as provided in this paragraph (d), provided that any such scrap which is a part of termination inventory may be sold only in accordance with the provisions of the termination article of this contract and applicable laws and regulations. Upon liquidafion of all partial payments hereunder or upon completion of deliveries called for by this contract, title to all property (or the proceeds thereof) which has not been delivered to and accepted by the Government under this contract or which has not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this Article shall vest in the Contractor.

- bility for Government-furnished Property' and any other provision of this contract defining liability for Government-furnished property shall be inapplicable to property to which the Government shall have acquired title solely by virtue of the provisions of this Article. The provisions of this Article shall not relieve the Contractor from risk of loss or destruction of orl damage to property to which title vests in the Government under the provisions hereof.
 - supplemented or amended) contains provision for Advance Payments, and in addition if at the time any partial payment is to be made to the Contractor under the provisions of this partial payments article any unliquidated balance of advance payments is outstanding, then notwithstanding any other provision of the Advance Payments Article of this contract the net amount, after appropriate deduction for liquidation of the advance payment, of such partial payment shall be deposited in the special bank account or accounts maintained as required by the provisions

of the Advance Payments Article, and shall thereafter, be withdrawn only pursuant to such provisions."

The plaintiff herein was a letter subcontractor also of the Wright Aeronautical Corporation, later merged with Curtiss-Wright Corporation, and the same situation prevailed in its relationship to Curtiss-Wright as did with respect to its relationship to the Kaiser Manufacturing Corporation insofar as pertains to the resues with which we are here concerned—the terms of the Partial Payment Clause and approval of their inclusion in the letter subcontracts by the Contracting Officer of the United States Air Force.

The assessment date here in question was January 1, 1952. During the calendar year 1951 the plaintiff made formal written requests at various intervals, and in varying amounts for payments to it by its two contractors—Kaiser Manufacturing Corporation and Curtiss-Wright Corporation—in accordance with the Partial Payment Clauses contained in the respective letter subcontracts. Said requests were audited and approved by a Contracting Officer of the United States Air Force. On October 12, 1951, partial payment in the amount of \$163,949.20, representing the aggregate amount of the requests, was made by the Kaiser Manufacturing Corporation to plaintiff, and on December 31, 1951, a payment of \$510.827.67 was similarly made by Curtiss-Wright to plaintiff.

The position of the plaintiff is that it has paid taxes, which were unlawfully assessed to it, and that the assessment is illegal and void. Plaintiff contends:

- I. The tax assessed is an ad valoremetax assessed upon the property and not a privilege tax assessed against the taximyer.
- 11. Property owned by the Federal Government is immune from local ad valorem property tax.
- III. The question of title under procurement contracts entered into pursuant to Federal procurement statutes and constitutional authority presents a Federal question

for determination by Federal courts under Federal law exclusively, and is in nowise subject to, or controlled by the law of any state.

- IV. Partial payment clauses vesting title in the Federal Government were fully authorized and effective.
- V. Under the partial payment clauses title to the property here in question was vested in the United States Government on assessment day, January 1, 1952. This was absolute title—not bare lien or security title.
- VI. Equitable arguments advanced by defendants, City of Detroit and County of Wayne, have been fully and completely rejected by the Supreme Court of the United States.

VII. Murray is the real party in interest and the proper party to bring this action.

VIII. There is nothing in the conduct of the parties inconsistent with the vesting of absolute title, or which could divest the United States Government of such title.

IX. The taxes were not paid voluntarily, but under protest.

The United States contends that the assessment was based on property of the United States and was constitutionally invalid. It reasons that the ownership of the property was vested in the United States when the assessment was made, said ownership having vested at the time of the making of partial payments in accordance with the Partial Payment Clause, which was fully authorized. It also devotes some of its arguments to the proposition that the Murray Corporation is the real party in interest.

In direct opposition to the contentions of the plaintiff and to those of the United States, the position of the City of Detroit is that:

- I. The partial payment and transfer of title clause was not authorized, nor was it in conformance with the Federal statutes,
- 11. The inclusion of the above clause would not defeat an ad valorem tax on personal property in the hands of

an independent subcontractor acquired in the course of carrying out provisions of a subcontract for defense production.

III. The course of action and dealing with the property was inconsistent with the vesting of absolute title; the Government, therefore, was given only a lien or title for security purposes, leaving plaintiff with an equitable title in said personal property which was still subject to an advalorem property tax.

The position of the County of Wayne is aligned with that of the City of Detroit. It contends that The Murray Corporation is not the real party in interest. It also conends that the Contracting Officer had no authority to authorize the prime contractor to include the Partial Payment Clause or to include the provision for the passage of title from the subcontractor to the Government in the contracts between the prime and the subcontractors. Both the City and the County stand firm in their conviction as to the validity of the tax in question.

It is the County of Wayne which urges so strongly the proposition that plaintiff here is in non-compliance with Rule 17 (a) F.R.C.P. The City fails to raise this point, which may or may not be significant. In any event the theory of the County is that the plaintiff has recovered the major portion of the taxes paid by passing it on to the prime contractor, and that plaintiff therefore has sustained no loss and, as a result, has no right to bring this action. The theory of the plaintiff is that the person having the right sought to be enforced, by substantive law, is the real party in interest, and that it is the law of the State which determines what is the substantive law. Under Michigan law (M.S.A. 7.97) it is the person paying a tax such as this who may sue for refund. There is no claim made by the County that the plaintiff assigned its claim for the tax refund. It merely claims that because the amount of such tax was included as an item of plaintiff's cost in billing the prime contractor that plaintiff has deprived itself of the right to sue for refund.

The cases to this effect cited by the County are inapposite. The Court is constrained to conclude that the argument of the County on this issue is specious.

The next point for discussion has to do with the validity of the inclusion of the Partial Payment Clause in the letter subcontracts. Both County and City contend that the authority for such procedure was lacking. Before making any comment upon the merit of this point, it occurs to the Court that there is some doubt concerning the propriety of a collateral attack by a city and a county apon the validity of a provision in a contract existing between parties to such contract when neither city nor county is itself party to said contract, and when the overall picture is as it is here. Such an issue may well be one that this Court should decline to resolve. None of the parties to the prime contract, or to the subcontract, contests the authority of the United States to include the Partial Payment Clause. It may well be that such authority might be properly questioned in a direct proceeding by the proper parties. Be that as, it may, we are persuaded that the Partial Payment Clause herein is not invalid for want of authority, or for non-conformance with Federal statutes.

The point at issue most strongly debated, and having the greatest merit, is the effect of the Bartial Payment Clause. There is no disagreement on the proposition that local government may not tax property owned by the Federal Government. Whether the personal property here assessed was owned by the Federal Government in the sense that it could not be taxed at a local level is the issue. A reading of the Partial Payment Clause leaves no doubt that, upon the making of a partial payment, title to parts, materials, etc., acquired for the performance of the contract vests in the United States Government as does title to all property subsequently acquired for the performance of the contract.

It is the position of the City of Detroit that the transfer of title upon the making of partial payment is effective to create a lien, that the title of the United States to the

property in question is security title only, and that plaintiff still remains the beneficial owner. The City cites 'numerous cases which it claims support this contention. In many, analogy is drawn to an equitable mortgage situation where, although title be transferred, said title is merely for security purposes, and is treated by the Courts The City cites S.R.A. Inc. v. Minnesota, 327 U.S. 558 (1945) as authority for the proposition that despite the transfer of legal title here, the plaintiff still retained beneficial interest subject to taxation by the state. It is not perceived that the holding in this case supports the City's position. If the reasoning there used and quoted in the brief of the City be applied here, the argument of the City must fail. In that case the United States had contracted to sell land. The State sought to tax the realty at a time when the United States still held legal title. The Court held that it might do so-that the contract for the purchase of the land, transferred the equity to the vendee and that the vendor. United States, retained only a legal title as security. The Court also went on to state that the "possibility of repossession by the United States is not enough to block a tax sale in which the paramount rights of the United States are protected." S.R.A. Inc. v. Minnesota, subra, 566. In the instant case the Linited States is the vendee of the assessed property. It has contracted with the prime contractor for the manufacture of aircraft sub-assemblies for delivery to it, for use by it, to be paid for by it, and to be fully, and completely owned by it in every sense of the word ownership. It is submitted that title held for security purposes is a title that is intended to be relinquished, and whose forward look is transfer to a vendee, or retransfer to a mortgagor! Such title is temporary in nature, and it is so regarded by the parties. The City offers numerous arguments-all very creditable and well presented-to the effect that, although bare legal title passed to the United States, the equitable title remained in the plaintiff. The brief of the City devotes some time to a so-called "course of conduct and dealing with the property in question inconsistent with the claim of absolute title in the Government." In its printed brief.

at page 50, the City lists ten "salient facts" as illustrative of the inconsistent course of conduct. In view of the type of subcontract here involved, the scope of the operation, the practical exigencies existent, these ten "salient facts" are not persuasive when balanced against what is viewed to be an overriding consideration.

A type of contract whose ultimate purpose is specification manufacturing for a purchaser under which title is to pass before delivery, but after partial payment, appears to this Court to be a far cry from any customary lien or security situation. There is no contention here that the United States is at any time to retransfer title to the manufactured product(s) back to the plaint if once, the plaintiff has performed the necessary conditions. There is no mere lien here which the United States might foreclose. Might it be legally said that if the plaintiff failed to complete, the manufacturing that the United States could not take possession of the property in question and assign it to another manufacturer for completion?

It was intended by the parties that plaintiff was to manufacture certain sub-assemblies according to specification which would become the property of the purchaser. United States. The fact of future delivery is not determinative of ownership. The fact of contractual agreement is—such agreement stipulating the time for passage of title. Why should plain, unambiguous language be distorted so as to convert a legal title holder to a lienor because persons not party to the contract-centend that title passed prematurely? If a lien situation is to be construed, it could only be in favor of the plaintiff as to labor, and inaterials not paid for (without considering for the moment the legality of a lien on the property).

In summing up, it appears that the position of the defendants here, in order to be maintained, requires a forced construction of the contracts involved, whereas a natural construction does violence to no legal or equitable concepts. It is therefore concluded that summary judgment

should be entered for the plaintiff, and an order may be presented accordingly.

Dated at Detroit, Michigan, this 23rd day of June, A.D. 1955.

Thomas P. Thornton (signed), United States District Judge.

ORDER GRANTING MOTION FOR SUMMARY IUDGMENT

(Fited June 29, 1955)

A motion having regularly been made by the plaintiff above named on January 6, 1954, for summary judgment in accordance with the provisions of Rule 56 of the Rules of Civil Procedure, on the ground that there is no genuine issue as to any material fact and that plaintiff is entitled

udgment as a matter of law;

On reading the complaints, the answers, and on reading and filing the notice of motion dated January 6, 1954, and the affidavits of Mark I. Sammon, E. R. Jones, Nicholas Dykstra and Meyer H. Dreety in support of said motion, together with the stipulations and depositions on file herein, and the parties having agreed by their respective counsel that there is no genuine issue as to any material fact, it is established that there is no genuine issue as to any material fact and that plaintiff is entitled to judgment as a matter of law;

Now, therefore, on motion of Butzel, Eaman, Long; Gust & Kennedy, attorneys for the plaintiff, and on the decision of the Court filed herein on June 23, 1955, it is hereby

ORDERED, that said motion be and the same hereby is granted and that separate and several judgments be entered against each of the defendants and in favor of the plaintiff in Civil Actions Nos. 12108, 12482 and 12483, as follows:

(a) In Civil Action No. 12108 judgment against defendant City of Detroit for the sum of Thirty-three

Thousand, Eight Hundred Fifty Seven and 48/100 Dollars (\$53,857.48), being the first half of the 1952 personal... property tax illegally collected by defendant and paid by plaintiff under protest on August 12, 1952 plus interestthereon at the rate of five per cent (5%) per annum from August 12, 1952, to and including date of entry of julgment.

- (b) In Civil Action No. 12482 judgment against desfendant City of Detroit for the sum of Thirty-three Thousand, Eight Hundred Fifty-Seven and 48/100 Dollars (\$33,857.48), being the second half of the 1952 personal property tax illegally collected by defendant and paid by plaintiff under protest on January 15, 1953, plus interest thereon at the rate of five per cent (5%) per annum from January 15, 1953 to and including date of entry of judgment.
- (c) In Civil Action No. 12483 judgment against the defendant County of Wayne for the sum of Twelve Thousand, Five Hundred Seventy-Two and 66/100 Dollars (\$12,-572,66), being the amount of the 1952 personal property tax illegally collected by defendant and paid by plaintiff under protest on January 15, 1953, plus intérest thereon at the rate of five per cent (5%) per annul i from January 15, 1953 to and including date of entry of judgment.

Thomas P. Thornton. United States District Judge.

A True Copy.

Frank J. Dingell, Clerk.

By John J. Gunther, Deputy Clerk.

Done at Detroit, Michigan, this 29th day of June, 1955.

DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Michigan Southern Division

THE MURRAY CORPORATION OF AMERICA, a Delaware corporation, Plaintiff,

VS.

CITY OF DETROIT, a Michigan municipal corporation,

Defendant,

and

UNITED STATES OF AMERICA, Intervenor. Civil Action No. 12108 (being a part of consolidated Civil Action No. 12108).

JUDGMENT

(Filed June 29, 1955)

The motion of the plaintiff, The Murray Corporation of America, for summary judgment pursuant to Rule 56 of The Rules of Civil Procedure, having been presented, and the Court being fully advised in the premises,

The Court finds that the plaintiff is entitled to a summary judgment as a matter of law; therefore,

IT IS ORDERED AND ADJUDGED that plaintiff have judgment for and recover of and from the defendant City of Detroit the sum of \$33,857.48, being the amount of the first half of the personal property tax illegally collected by defendant for the year 1952, plus the sum of \$4,876.49 as interest, or a total sum of \$38,733.97, with interest thereon at the rate of five per cent (5%) per annum from the date of entry hereof.

Thomas P. Thornton, United States District Judge.

A True Copy.

Frank J. Dingell, Clerk.

By John J. Gunther, Deputy Clerk.

Done at Detroit, Michigan, this 29th day of June, 1955.

DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Michigan Southern Division

THE MURRAY CORPORATION OF AMERICA, a Delaware corporation, Plaintiff,

VS.

CITY OF DETROIT, a Michigan municipal corporation,

Defendant,

united states of AMERICA, Intervenor. Civil Action No. 12482 (being a part of consolidated Civil Action No. 12108).

JUDGMENT

(Filed Jane 29, 1955) *

The motion of the plaintiff, The Murray Corporation of America, for summary judgment pursuant to Rule 56 of The Rules of Civil Procedure, having been presented, and the Court being fully advised in the premises.

The Court finds that the plaintiff is entitled to a summary judgment as a matter of law; therefore.

IT IS ORDERED AND ADJUDGED that plaintiff have judgment for and recover of and from the defendant City of Detroit the sum of \$33,857,48, being the amount of the second half of the personal property tax illegally collected by defendant for the year 1952, plus the sum of \$4,157.02 as interest, or a total sum of \$38,014.50, with interest thereon at the rate of five per cent (5%) per annum from the date of entry hereof.

Thomas P. Thornton,

United States District Judge.

A True Copy.

Frank J. Dingell, Clerk.

By John J. Gunther, Deputy Clerk.

Done at Detroit, Michigan, this 29th day of June, 1955.

DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Michigan Southern Division

THE MURRAY CORPORATION OF AMERICA, a Delaware corporation, Plaintiff,

VS.

.COUNTY OF WAYNE, a Michigan constitutional body corporate,

Defendant,

united States of America, Intervenor. Civil Action No. 12483 (being a part of consolidated Civil Action No. 12108.

JUDGMENT

(Filed June 29, 1955)

The motion of the plaintiff, The Murray Corporation of America, for summary judgment pursuant to Rule 56 of The Rules of Civil Procedure, having been presented, and the Court being fully advised in the premises,

The Court finds that the plaintiff is entitled to a summary judgment as a matter of law; therefore,

TT IS ORDERED AND ADJUDGED that plaintiff have indiment for and recover of and from the defendant County of Wayne, the sum of \$12,572.66, being the amount of personal property tax illegally collected by defendant for the year 1952, plus the sum of \$1,543.64 as interest, or a total sum of \$14,116.30, with interest thereon at the rate of five per cent (5' of per annum from the date of entry hereof.

Thomas P. Thornton,

United States District Judge.

A.True Copy.

Frank J. Dingell, Clerk.

By John J. Gunther, Deputy Clerk.

Done at Defroit, Michigan, this 29th day of June, 1955.

DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Michigan, Southern Division

THE MURRAY CORPORATION OF AMERICA, a Delaware corporation, Plaintiff.

, Vs.

CITY OF DETROIR, a Michigan municipal corporation,

and ./

UNITED STATES OF AMERICA, Intervenor. Civil Action No. 12108 (being a part of consolidated Civil Action No. 12108).

NOTICE OF APPEAL

Defendant,

(Filed July 27, 1955)

Notice is hereby given that the City of Detroit, a Municipal Corporation, hereby appeals to the United State Court of Appeals for the Sixth Circuit from:

Judgment entered in the above entitled cause on June 29, 1955, in favor of The Murray Corporation of America, a Doaware corporation, plaintiff, for the sum of thirty-eight thousand seven hundred thirty three and 97/100 (\$38,-733,97) dollars.

City of Detroit, a Municipal Corporation, Defendant,

By: Paul T. Dwyer,

· Corporation Counsel,

Bert R. Sogge and

Julius C. Pliskow,

Assistants Corporation Counsel,

By: Julius C. Pliskow,

Assistant Corporation Counsel, Attorneys for said Defendant, 301 City Hall.

Detroit 26, Michigan.

Receipt of copy of within notice of appeal hereby asknowledged.

The Murray Corporation of America,
A Delaware Corporation, Plaintiff;
By Butzel, Eaman, Long/Gust & Kennedy,
Per Wm. M. Saxton, an/Associate,
Attorneys for said Plaintiff.

United States of America, Intervenor;

By Fred W. Kaess District Attorney, John L. Owen, Assistant District Attorney.

Per Fred W. Kress, Attorney, for Intervenor.

IN THE

DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Michigan, Southern Division

THE MURRAY CORPORATION OF AMERICA, a Delaware corporation, Plaintiff,

CITY OF DETROIT, a Michigan mu-

.Defendant,

and
UNITED STATES OF AMERICA,
Intervenor.

Civil Action No. 12482 (being a part of consolidated Civil Action No. 12108).

NOTICE OF APPEAL

(Filed July 27, 1955)

Notice is hereby given that the City of Detroit, a Municipal Corporation, hereby appeals to the United States Court of Appeals for the Sixth Circuit from:

Judgment entered in the above enlitted cause on June 29, 1955, in favors of The Murray Corporation of America, a Delaware corporation, plaintiff, for the sum of thirty eight thousand fourteen and 50, 100 (38,01450) dollars.

Dated: July 26, 1955.

City of Detroit, a Municipal Corporation, Defendant,

By: Paul T. Dwyer,

Corporation Counsal.

Bert R. Sogge, Vance (1) Ingalls, and Julius C. Pliskow,

Assistants Corporation Counsel, By: Julius C. Pliskow,

Assistant Corporation Counsel, Attorneys for said Defendant, 301 City Hall, Detroit 26, Michigan.

Receipt of copy of within notice of appeal hereby acknowledged.

The Murray Corporation of America,

A Delaware Corporation, Plaintiff:

By Butzel, Eaman, Long, Gust & Kennedy,

Per Wm. M. Saxton, an Associate,

Attorneys for said Plaintiff.

United states of America, Intervenor,
John L. Owen,

Assistant District Attorney,

By Fred W. Kaess,

District Attorney,

Per Fred W. Kaess,

Attorneys for Intervenor.

DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Michigan, Southern Division

THE MURRAY CORPORATION OF AMERICA, a Delaware corporation, Plaintiff,

CITY OF DETROIT, a Michigan municipal corporation.

COUNTY OF WAYNE, a Michigan constitutional body corporate.

Defendants, UNITED STATES OF AMERICA,

Intervenor

Consolidated Civil Action No. 12108 (being a consolidation of Civil Actions Nos. 12108, 12482 and 12483)...



NOTICE OF APPEAL FROM FINAL JUDGMENT

(Filed July 27, 1955)

Notice is hereby given that the County of Wayne, a Michigan constitutional body corporate, one of the defendants in the above-entitled cause, hereby appeals to the United States Circuit Court of Appeals for the Sixth Circuit from the final judgment entered in this court and cause on June 29, 1955.

Gerald K. O'Brien,
Prosecuting Attorney,
By Hobart Taylor, Jr.,

Assistant Prosecuting Attorney for the County of Wayne, Chief, Civil Division:

By: Philip A. McHugh.

Assistant Prosecuting Attorney for the County of Wayne,

By Thomas J. Foley, Jr.,

Assistant Prosecuting Attorney for the County of Wayne.

Dated: July 18, 1955.

Butzel, Eaman, Long, Gust & Kennedy,

Attorneys for

The Murray Corporation of America, Plaintiff, Victor W. Klein, Of Counsel;

Paul T. Dwyer,

Corporation Counsel.

Julius C. Pliskow,

Asst. Corporation Counsel.

Lyle M. Turner,

Special Asst. Attorney General;

Frederick W. Kaess,

U.S. Attorney,

John L. Owen,

Asst. U. S. District Attorney.

IN THE

DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Michigan, Southern Division

THE MURRAY CORPORATION OF AMERICA, a Delaware corporation, Plaintiff,

VS.

CITY OF DETROIT, a Michigan municipal corporation,

Defendant.

UNITED STATES OF AMERICA.
Intervenor.

Civil Action No. 12198 (being a part of consolidated Civil Action No. 12108).

ORPER STAYING PROCEEDINGS

(Filed July 27, 1955)

At a session of the District Court of the United States for the Eastern District of Michigan beld at the Federal Building in the City of Detroit on the 27th day of July, 1955. Present: Hon. Arthur A. Koscinski, District Judge.

In this cause, the defendant, City of Detroit, a Municipal Corporation, having filed a Notice of Appeal and simultaneously therewith laying requested a Stay of Proceedings and having presented a supersedeas bond pursuant to Rule 73 of the Rules of Civil Procedure. Now, therefore,

IT IS TRDERED that all proceedings in said cause be stayed during the pendency of the appeal filed bersin.

Arthur A Koseinski. District Judge.

A True Copy.

Frank J. Dingell, Clerk. By John J. Gunther, Deputy Clerk.

IN THE

DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Michigan, Southern Division

THE MURRAY CORPORATION OF AMERICA, a Delaware corporation, Plaintiff,

CITY OF DETROIT, a Michigan municipal corporation,

Defendant,

UNITED STATES OF AMERICA, Intervenor Civil Action No. 12482 (being a part of consolidated Civil Action No. 12108).

ORDER STAYING PROCEEDINGS

(Filed July 27, 1955)

At a session of the District Court of the United States for the Eastern District of Michigan held at the Federal Building in the City of Detroit on the 27th day of July, 1955.

Present: Hon. Arthur A. Koscinski, District Judge.

In this cause, the defendant, City of Detroit, a municipal Corporation, having filed a Notice of Appeal and simultaneously therewith having requested a Stay of Proceedings and having presented a supersedeas bond pursuant to Rule 73 of the Rules of Civil Procedure. Now, therefore,

It is ordered that all proceedings in said cause be stayed during the pendency of the appeal filed herein.

Arthur A. Koscinski, District Judge:

A True Copy.

Frank J. Dingell, Cerk.

By John J. Gunther, Deputy Clerk.

IN THE

DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Michigan, Southern Division

THE MURRAY CORPORATION OF AMERICA, a Delaware corporation, Plaintiff,

CITY OF DETROIT, a Michigan municipal corporation, and

COUNTY OF WAYNE, a Michigan constitutional body corporate, Defendants,

UNITED STATES OF AMERICA, Intervenor.

Consolidated Civil Action No. 12108 (being a consolidation of Civil Actions Nos. 12108, 12482 and 12483).

ORDER STAYING PROCEEDINGS

(Filed July 27, 1955)

At a session of the District Court of the United States for the Eastern District of Michigan held at the Federal Building in the City of Detroit on the 27th day of July, 1955.

134 - Order Staying Proceedings (Cause No. 12483)

Present: Hon. Arthur A. Koscinski, District Judge.

In this cause, the defendant, County of Wayne, a Michigan constitutional body corporate, having filed a notice of appeal and simultaneously therewith having requested a stay of proceedings and having presented a supersedeas bond, pursuant to Rule 73 of the Rules of Civil Procedure,

IT IS ORDERED that all proceedings in said cause be stayed during the pendency of the appeal filed herein.

Arthur A. Koscinski, District Judge.

A True Copy.

Frank J. Dingell, Clerk. .

By John J. Gunther, Deputy Clerk.

IN THE

DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Michigan, Southern Division

THE MURRAY CORPORATION OF AMERICA, a Delaware corporation, Plaintiff,

VS

CITY OF DETROIT, a Michigan municipal corporation,

Defendant.

THE MURRAY CORPORATION OF AMERICA, a Delaware corporation,

Plaintiff,

VS

CITY OF DETROIT, a Michigan municipal corporation,

Defendant.

THE MURRAY CORPORATION OF AMERICA, a Delaware corporation, — Plaintiff,

COUNTY OF WAYNE, a Michigan constitutional body corporate,

Defendant.

Civil Action No. 12108.

Civil Action No. 12482.

Civil Action No. 12183.

ORDER FOR CONSOLIDATION OF ACTIONS FOR PRESENTATION AND HEARING OF APPEAL

(Filed July 29, 1955)

The Stipulation for consolidation of actions for presentation and hearing of appeal having been entered by all parties to said actions:

IT IS ORDERED that the said actions he, and hereby are, consolidated for presentation and hearing of the appeals taken by the respective defendants; and further

That henceforth from the date of this Order all papers relating to any form of appeal of any of said consolidated

such filing shall constitute filing in Civil Action No. 12108 and such filing shall constitute filing in Civil Action No. 12482 and Civil Action No. 12483.

Arthur A. Koseinski, United States District Judge.

In absence of Judge Thomas P. Thornton...

Dated: July 29, 1955.

A True Copy.

Frank J. Dingell, Clerk, By Anna K. Haag, Deputy Clerk.

ORDER EXTENDING TIME FOR FILING RECORD ON APPEAL AND DOCKETING APPEAL

(Filed July 29, 1955).

The Stipulation for Extension of Time for Filing Record on Appeal and Docketing Appeal having been entered by all parties to said actions;

T IS ORDERED that the time for Sling the Record on Appeal and Docketing the Appeal in the above consolidated action is hereby extended to and including September 30, 1955.

Arthur A. Koscinski, United States District Judge.

Judge Thomas P. Thornton.

Dated: July 29, 1955.

A True Copy.

Frank J. Dingell, Clerk, By Anna K. Haag, Deputy Clerk,

ORDER EXTENDING TIME FOR FILING OF THE APPENDIX AND ANY FURTHER PROCEEDINGS

(Filed September 15, 1955)

At a session of the United States Circuit Court of Appeals, held at the Federal Building, in the City of Detroit, State of Michigan, on the 14th day of September, A.D., 1955.

Present: Honorable Charles C. Simons, Chief United States Circuit Judge.

The Stipulation for extension of time for the filing of the appendix and any further proceedings in the above entitled appeal having been entered into by all parties to said action.

any further proceedings in this matter in the above consolidated action be and the same is hereby extended to and including November 14, 1955.

/s/ Charles C. Simons, Chief United States Circuit Judge.

A True Copy.

Attest:

Carl W. Reuss, Clerk, By Mary M. McAfee, Deputy Clerk.

ORDER EXTENDING TIME FOR FILING APPENDIX AND ANY FURTHER PROCEEDINGS

(Filed November 14; 1955)

At a session of the United States Circuit Court of Appeals, held at the Federal Building, in the City of Detroit, State of Michigan, on the 14th day of November, A.D., 1955.

Present: Honorable Charles C. Simons, Chief United States Circuit Judge.

The stipulation for extension of time for filing appendix and any further proceedings in the above entitled appeal having been entered into by all parties to said action.

It is Ordered that the time for filing appendix and any further proceedings in this matter in the above consolidated action be and the same is hereby extended to and including December 13, 1955.

Chairles C. Simons,

Chief United States Circuit Judge.

A True Copy.

Attest:

Carl W. Reuss, Clerk, By Grace Keller, Deputy Clerk.

O.K.

as to form,

/s/ Victor W. Klein.

Approved as to form,

/s/ . Rred W. Kaess, U. S. Attorney,

By: John L. Owen, Asa't U. S. Attorney.

ORDER ALLOWING PREPARATION AND FILING OF JOINT APPENDIX AND USE OF EXHIBITS IN ORIGINAL FORM

(Filed December 2, 1955)

In accordance with the Stipulation heretofore entered into on November 29, 1955, by the parties to the above entitled appeal, by their respective counsel;

IT IS HEREBY ORDERED, that the parties may prepare and file with the Court in this cause a Joint Appendix which shall contain the relevant docket entries in the District Court below, those portions of the pleadings which are relevant to the issues in this case, together with exhibits or such portion thereof as the parties hereto agree, the opinion of the District Court below, the judgments appealed from and other parts of the record material to the questions presented on this appeal.

It is further Ordered, that in accordance with Rule 33 of the Rules of this Court that the parties may file those exhibits set forth in the aforementioned Stipulation, dated November 29, 1955, in their original form or by means of photostats or other process in lieu of printing thereof, and that the parties may refer to any of said exhibits or any portions thereof in their respective briefs in the same manner as if said exhibits were set forth in their entirety in the aforementioned Joint Appendix to be filed herein.

> /s/ Potter Stewart, United States Circuit Judge.

A True Copy., Attest:

Carl W. Reuss, Clerk, By Mary M. McAfee, Deputy Clerk. (Seal)

ORDER EXTENDING TIME FOR FILING OF JOINT APPENDIX AND APPELLANTS' BRIEFS

(Filed December 6, 1955)

In accordance with the Stipulation heretofore entered into on December 2, 1955, by the parties to the above entitled appeal, by their respective counsel, and filed herein;

TT IS HEREBY ORDERED, that the time for filing a Joint Appendix herein be extended to and including December 20, 1955; and

IT IS FURTHER ORDERED, that the time for filing of Appellants' Briefs be extended to and including January 23, 1956.

/s/ Potter Stewart, United States Circuit Judge.

A True Copy.

Attest:

Carl W. Reuss, Clerk, By Mary M. McAfee, Deputy Clerk. (Seal)

MURRAY- EXHIBIT No. 1

Prime Contract No. AF 33 (038)-18481 between Kaiser Manufacturing Corporation and the United States Government in effect on January 1, 1952.

UNITED STATES OF AMERICA DEPARTMENT OF THE AIR FORCE

Dayton, Ohio 30 October 1953, (Place) (Date)

I hereby certify that the attached documents consist of a photostatic copy of the original executed Prime Contract No. AF 33(038)-18481, dated 20 December 1950, between the Department of the Air Force and Kaiser-Frazer Corporation, and Amendments No. 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 thereto (except that Amendments No. 3 and 15 are conformed copies only), on file in the Contract File Section, Procurement Support Branch, Procurement Division, Headquarters Air Materiel Command, Wright-Patterson Air Force Base, Ohio.

Ruth I. Sawyer
Chief, Contract Files Section
Procurement Support Branch
Procurement Division

I hereby certify that Ruth I. Sawyer, who signed the foregoing certificate, is the Chief, Contract Files Section, Procurement Support Branch, Procurement Division, Headquarters Air Materiel Command, Weight-Patterson Air Force Base, Ohio, and that to this certification as such full faith and credit are and ought to be given.

In Testimony whereof I, Harold E. Talbott, Secretary of the Air Force, have hereunto caused the seal of the Department of the Air Force to be affixed and my name to be subscribed by the Administrative Assistant to the Secretary of the Department, at the City of Washington, this 3rd day of November, 1953.

Harold E. Talbott, : Secretary of the Air Force, ...

By Landis D. Henderson, Deputy Administrative Assistant.

AF FORM 44 Approved 1 April WF-O-12 JUL 48 30M

MCP 71-6

(Rev 10 Jan 50)

DO-01 Certified under NPA Regulation No. 2

Contract No. AF 33(038)-18481

DO-19 for Item 6 per notice dated 5/15/51.

John Suchy, Jr.
Contracting Officer.

LETTER CONTRACT BETWEEN DEPARTMENT OF THE AIR FORCE AND KAISER MFG. CORPORATION (Contractor)

RMB/mle.

Contract For: C-119C Airplanes, Spare Parts, Special Tools and Ground Handling Equipment, Training Parts, Training Tools and Equipment, and Data.

Place: Air Materiel Command, Wright-Patterson Air Force Base, Dayton, Ohio

Administrative Information: Accounting & Disbursing officer, CEAPD, Detroit, Mich. per notice dtd 3/15/51 is designated as the officer to make payments in accordance with this contract.

The sums to be expended by the Government hereunder are chargeable to the following allotments, the available balances of which are sufficient to cover the same.

See Amend # .9 57X4100 163-5000 P 113(1)-09 S 33-038

The Office having overall administrative responsibility for this contract is as designated below and Contractor's

Invoices or Vendor's Shipping Documents used as Invoices shall be made out to the Finance Officer designated to make payment hereunder and shall be sent by the Contractor to the Administrative Office listed below for recording and forwarding to the Finance Officer for payment: Detroit AF Procurement Field Office, West Warren Avenue & Lonyo Boulevard, Detroit 32, Michigan.

Point of Inspection and Acceptance and F O B Point, Willow Run, Detroit, Michigan.

Type Contract Contemplated: CPFF per Amend # 2.

Purchase Request No.: 52037.

Buver: John Suchy, Jr., MCPPXA62.

Equipment Class: 01.

Type Price Redetermination anticipated in Definitive Contract: Incentive.

Program:

This instrument has been negotiated pursuant to Section 2 (c) (X) of Public Law 413, 89th Congress.

Air Force-WPAFB-(B)-O-28 Aug 50 500

HEADQUARTERS AIR MATERIEL COMMAND

Letter Confract

Contract No. AF 33(038)-18481 Wright-Patterson Air Force Base, Dayton, Ohio

NAME. Kaiser-Frazer Corporation 20 December 1950 ADRESS: Willow Run, Detroit, Michigan

Dear Sirs:

- 1. An order is hereby placed with you for the furnishing to the Government of the supplies or services set in Exhibit "A" attached hereto and hereby made a part hereof.
- 2. Except as otherwise expressly provided to the contrary herein, you are directed, upon your acceptance of this order to proceed immediately to procure the necessary materials, and to commence the manufacture of the supplies or performance of the services, called for herein, and to pursue such work with all diligence to the end that the supplies may be delivered or services performed at the earliest practicable date.
- 3. All applicable clauses (other than any termination clause) now required by Federal Law, Executive Order, or applicable Procurement Regulations to be included in contracts for supplies or services of the kind herein described are incorporated herein by reference.
- 4. By your acceptance hereof, you undertake without delay to enter into negotiations with the Department of the Air Force looking to the execution of a definitive contract which will include all applicable clauses then required by Federal Law, Executive Order and applicable Procurement Regulations to be included in contracts for

supplies or services of the kind herein described. The definitive contract will also contain a detailed delivery schedule and prices, terms and conditions as agreed to by the parties which may or may not be at variance with the provisions of this order. It is expected that such definitive contract will be placed with you prior to 31 Oct. # 18.

- 5. You are not authorized to expend or obligate, in furtherance of your performance hereunder, more than \$38,000,000.00 in the aggregate. Pending the execution of a definitive contract, each expenditure, order, subcontract or commitment made by you in furtherance of your . performance hereunder, if for an amount that shall exceed either five per centum of the amount last above stated or \$25,000.00, whichever is less, for tools, dies, jigs, fixtures, materials, supplies, parts, equipment, engineering assistance or reproduction or other license rights will be subject to written approval by the Contracting Officer. No contract, regardless of the amount thereof, shall be made by you with any other party for furnishing any of the completed or substantially completed articles, spare parts' or work herein called for, without the written approval of the Contracting Officer as to sources.
- 6. Government Property and Partial Payments. (a) Title to all Government furnished property shall remain in the Government and shall be so identified while in possession of the Contractor, as directed by the Contracting Officer.
- (b) The necessary property records in connection with this order shall be maintained in accordance with AF Manual 69-6 "Industrial Property Accounting for Government Property Furnished Under Fixed-Price Contracts," dated 31 December 1948, as amended, and other applicable regulations. Government property records shall be maintained by an Industrial Accountable Property Officer designated for this order by the cognizant AF Representative.
- (c) After your acceptance hereof, partial payments in accordance with regulations from time to time applicable, may be made to you upon your application to the

Contracting Officer, Headquarters, Air Materiel Command.

Letter Contract (FP) Air Force WPAFG-(B)-0-28 AUG 50 500

7. Termination

- (a) In case a definitive contract is not executed by the date specified in paragraph 4 hereof (or any subsequent date at any time mutually agreed upon) because of the inability of the parties to agree upon a definitive contract, this order will terminate automatically on the stated date or such subsequent date, as the case may be, and a Notice of Termination, effective on the date of automatic termination, shall be delivered to you.
- (b) The performance of work under this order may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to you of a Notice of Termination specifying the extent to which performance of work under this order is terminated, and the date upon which such termination becomes effective.
- (c) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer. you shall (1) stop work under this order on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts for materials. services or facilities except as may be necessary for completion of such portion of the work under this order as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; (4) assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of your right, title, and interest under the orders or subcontracts so terminated: (5) with the approval or ratification of the Contracting Officer, which approval or ratification shall be final and conclusive for all the purposes of this clause, settle all outstanding liabilities and all claims arising out of such

termination of orders and subcontracts; (6) transfer title (to the extent that title has not already been transferred) and, in the manner, to the extent and at the times directed by the Contracting Officer, deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a.. part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (ii) the completed or, partially completed plans, drawings, information and other property which, if this order had not been terminated, would be required to be furnished to the Government, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for the performance of this order; (7) use your best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in provision (6) of this pragraph, provided, however, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to you under this order or shall otherwise be credited to the price or cost of work covered by this order or paid in such other manner as the Contracting Officer may direct; (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination: and (9) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and. preservation of the property related to this order and in which the Government has or may acquire an interest.

shall submit to the Contracting Officer your termination claim. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon your request made in writing within such one year period or authorized extension, thereof. Upon your failure to submit a termination claim within the time allowed, the Contracting Officer shall determine, on the basis of information available to him, the amount, if any, due to you by reason of the termination.

- (e) Subject to the provision of paragraph 7(d) hereof, you and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to you by reason of the total or partial termination of work pursuant to this clause. In the event of any termination pursuant to paragraph 7(a) hereof, such amount or amounts shall not include any allowance for profit. the event of any termination pursuant to paragraph. 7(b) hereof, such amount or amounts may include a reasonable allowance for profit, but only on work actually done in connection with the terminated portion of this order. Any such amount shall not exceed the amount set forth in paragraph 5 hereof. Any such agreement shall be embodied in an amendment to this order and you shall be paid the agreed amount. Such amendment shall be final and conclusive upon you and the Government.
- (f) If you and the Contracting Officer are not able to agree in whole or in part, as provided in paragraph 7(a) hereof, as to the amount or amounts to be paid to you in connection with the termination of work pursuant to this clause, the Government, but without duplication of any amounts agreed upon in accordance with the abovecited paragraph 7(e), shall pay to you an amount determined as follows:
 - (1) There shall be included therein all costs and expenses incurred by you in performance of the work under this order and not previously paid to you. Any determination of costs under this paragraph shall be governed by the statement of Contract Cost Principles set forth in the appropriate part of Section XV of the Armed Services Procurement Regulation as in effect on the date of this order.
 - (2) There shall be included therein the cost, so far as not included under (1) above (which cost may include a reasonable allowance for profit to the subcontractor or vendors, but only on work done in connection with the terminated portion of any subcontract or order), of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph 7(c) (5) hereof, which are properly chargeable to the terminated portion of this order, provided that:

- Each such claim has been settled with the written approval or ratification of the Contracting Officer; or
- (ii) If a final judgment has been mendered against you, your subcontractor or vendor by a court of competent jurisdiction determining liability with respect to any such claim, the Contracting Officer has determined that such judgment or a part thereof is allocable to the terminated portion of this order.

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AF 33(038)-18481

In order for a judgment to be allowable under this subparagraph (ii), you, your subcontractor or vendor concerned must have given the Contracting Officer prompt notice of the initiation of the proceedings in which such judgment was rendered and offered in writing to give the Government complete control of the defense of the proceedings, and must have diligently defended the suit or, if the Government has assumed control of the defense of the proceedings, must have rendered such reasonable 'assistance as has been requested by the Government. If such judgment includes amounts for loss of anticipatory, profits or consequential damages, such amounts will not be allowable under this subparagraph.

- There shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of this order and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory; provided, however, that if the termination is pursuant to paragraph 7(a) hereof there shall not be included any amounts for the preparation of our settlement proposal.
- (4) . (i) In the event of the termination of this order for the convenience of the Government and not pursuant to paragraph 7(a) hereof, there shall be included therein

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such allowance for fee or profit with respect to work done by you prior to the effective date of the termination as the Contracting Officer may find reasonable under the circumstances.

(ii) In the event of the termination of this order pursuant to paragraph 7(a) hereof, no allowance for fee or profit shall be included in the amount to be paid to you.

The total sum to be paid to you under this paragraph shall not exceed the amount set forth in paragraph 5 hereof, reduced by the amount of payments otherwise made. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to you as provided in paragraph 7(f) (i) hereof, any amounts allocable to or payable in connection with property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph 7(e) hereof.

- (g) You shall have the right of appeal, under the clause entitled "Disputes," incorporated in this order by reference, from any determination of the amount due to you made by the Contracting Officer under paragraph 7(d) or 7(f) above (including any dispute as to whether termination has in fact taken place pursuant to paragraph 7(a) hereof), except that if you have failed to submit a claim within the time provided in paragraph 7(d) hereof and have failed to request extension of such time, you shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph 7(d) or 7 (f) above, the Government. shall pay to you the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal; any such determination being final and conclusive upon you and the Government.
- (h) In arriving at the amount due to you under this clause there shall be deducted (1) all unliquidated advance or other unliquidated payments theretofore made to you, (2) any claim which the Government may have against

you in connection with this contract, and (3) the agreed price for, or the proceeds of sale of any materials, supplies or other things acquired by you or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

- (i) The Government may from time to time, under such terms and conditions as it may prescribe, make pattial payments and payments on account against costs incurred by you in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which you will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by you to the Government upon demand, together with interest computed at the rate of 6% per annum, for the period from the date such excess payment is received by you to the date on which such excess is repaid to the Government.
- (j) For a period of five years after final settlement under this order, you shall preserve and make available to the Government at all reasonable times at your office, but without expense to the Government, all books, required, documents, and other evidence bearing on the cost, and expenses under this order and relating to the work terminated, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authoritic reproductions thereof.
- 8. Any claim arising under this order may be assigned subject to the terms of the Assignment of Claims Act of 1940 unless the subject matter of this order has been classified as secret, confidential or restricted, and any claims arising under this order shall not be subject to reduction or set off, for any indebtedness of the assignor to the United States arising independently of this order.
- 9. Your acceptance of this order will be indicated by affixing your signature to this letter and two copies thereof and returning the executed original and two executed copies to the Contracting Officer not later than 26 December 1950. Such acceptance will constitute this order a contract on the terms set forth herein.

10. Inspection.—The Contractor shall provide an acceptable and complete system covering the inspection of all materials, fabrication methods and finished parts. This system shall be approved by the Government representative who shall be assigned at the Contractor's plant.

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AF 33 (038)-18481

11. The provisions of paragraph 4-506.6 of the Joint Procurement Regulations and also the provisions of the contract articles set forth in the following paragraphs of the Armed Services Procurement Regulations are hereby incorporated into this Letter Contract by reference:

9-102 and 9-103 (Paro 9-8); 9-106 (Paro 9-10C);

9-107.1 (Paro 9-4);

9-202 (Paro 9-7); 9-104 (Paro 9-9); 9-107.4 (foreign rights);

12. Partial Payments in accordance with the attached paragraph 12.

See Amend # 4

Responsibilities for Supplies Tendered

The United States of America

By John Suchy, Jr. (Contracting Officer)

Accepted December 20, 1950

Kaiser-Frazer Corporation Affix Corporate Seal By Edgar F. Kaiser Pres.

Note: Type or Print Names under all signatures Air Force-WPAFB-(B)-G-24 NOV 50 500

AF 33(038)-18481

(Rev 23 Aug 50)

MCP 71-512

- 12. Partial Payments-Partial payments, which are hereby defined as payments prior to acceptance on work in progress for the Government under this contract, may be made upon the following terms and conditions,
 - The Contracting Officer may, from time to time, authorize partial payments to the Contractor upon property acquired or produced by it for the performance of this contract: Provided, that such partial payments shall not exceed 75 percent of the cost to the Contractor of the property upon which payment is made, which cost shall be determined from evidence submitted by the Contractor and which must be such as is satisfactory to the Contracting Officer; Provided further, that in no event shall the total of unliquidated partial payments (see (c) below) and of unliquidated advance payments, if any, made under this contract, exceed 80 percent of the amount set forth in paragraph 5 hereof.
 - (b) Upon the making of any partial payment under this contract, title to all parts, materials, inventories, work in process and non-durable tools theretofore acquired or produced by the Contractor for the performance of this contract, and properly chargeable thereto under sound accounting practice, shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor for the performance of this contract and properly chargeable thereto as aforesaid shall vest in the Government forthwith upon said acquisition or production: Provided, that nothing herein shall deprive the Contractor of any further partial or final payments due or to become due hereunder; or relieve the Contractor or the Government of any of their respective rights or obligations under this contract.
 - (c) In making payment for the supplies furnished hereunder, there shall be deducted from the contract

price therefor a proportionate amount of the partial payments theretofore made to the Contractor, under the authority herein contained.

(d) It is recognized that property (including, without limitation completed supplies, spare parts, drawings, information, partially completed supplies, work in process, materials, fabricated parts and other · things called for herein) title to which is or may hereafter become vested in the Government pursuant to this Clause will from time to time be used by or put in the care, custody or possession of the Contractor in connection with the performance of this contract. The Contractor, either before or after receipt of notice of termination at the option of the Government, may acquire or dispose of property to which title is vested in the Government under this Clause, upon terms approved by the Contracting Officer, provided, that after receipt of notice of termination, any such property that is a part of termination inventory may be acquired or disposed of only in accordance with the provisions of the termination clause of this contract and applicable laws and regulations. agreed price (in case of acquisition by the Contractor) the proceeds received by the Contractor (in case of any other disposition), shall, to the extent that such price and proceeds do not exceed the unliquidated balance of partial payments hereunder, be paid. or credited to the Government as the Contracting Officer shall direct; and such unliquidated balance shall be reduced accordingly. Current production scrap may be sold by the Contractor without approval of the Contracting Officer but the proceeds will be applied as provided in this paragraph (d), provided that any such scrap which is a part of termination inventory may be sold only in accordance with the provisions of the termination clause of this contract and applicable laws and regulations. Upon liquidation of all partial payments hereunder or upon completion of deliveries called for by this contract, title to all property (or the proceeds thereof) which has

not been delivered to and accepted by the Government under this contract or which has not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this Clause-shall vest in the Contractor.

- (e) The provisions of this contract referring to "Liability for Government-furnished Property" and any other provisions of this contract defining liability for Government-furnished property shall be inapplicable to property to which the Government shall have acquired title solely by virtue of the provisions of this Clause. The provisions of this Clause shall not relieve the Contractor from risk of loss or destruction of or damage to property to which title vests in the Government under the provisions hereof.
- (f) If this contract (as heretofore or hereafter supplemented or amended) contains provisions for Advance Payments, and in addition if at the time any partial payment is to be made to the Contractor under the provisions of this partial payments clause any unliquidated balance of advance payments is outstanding, then not withstanding any other provision of the Advance Payments Clause of this contract the net amount, after appropriate deduction for liquidation of the advance payment of such partial payment shall be deposited in the special bank account or accounts maintained as required by the provisions of the Advance Payments Clause, and shall thereafter be withdrawn only pursuant to such provisions.

APR 5-407.2 (1)

AF 33 (038)-18481

Air Force-WPAFB-L-25 SEP 50 2M

EXHIBIT "A" TO LETTER CONTRACT

AF 33(038)-18481

1C. Defivery—The Government desires the airplanes called for under Items 1 and 7 to be delivered in accordance with the following schedule:

| | 1951 | | | | 1952 | | | | |
|------|-------|------|------|------|------|------|------|------|-----|
| Aug. | Sept. | Oct. | Nov. | Dec. | Jan. | Feb. | Mar. | Apr. | May |
| 2 | | 9 | 14 | 20 | 20 | 20 | 20 | 20 | 4 . |

Amendment No. 1

Amendment No. 1 is omitted by agreement of the parties.

Amendment No. 2

HEADQUARTERS AIR MATERIEL COMMAND

MCPPXA13:IJZ:vpw

Wright-Patterson Air Force Base Dayton, Ohio

25. January 1951

Subject: Letter Contract dated 20 December 1950

designated AF 33(038)-18481

To: Kaiser-Frazer Corporation

Willow Run Detroit, Michigan

> Amendment No. 2 to subject Letter Contract

- 1. Subject Letter Contract, as amended, placed an order with you for the services or supplies therein described.
- 2. It is now desired to amend subject Letter Contract in the following respects:

- a. By deleting the words "Fixed Price" and "Incentive" as set forth on the cover page and by substituting in lieu of "Fixed Price" the words "Cost-Plus-a-Fixed Fee"
- b. By deleting Page 1 and by substituting in lieu thereof the new page 1 as set forth on Exhibit "A" to this Amendment No. 2.
- c. By deleting paragraph 12 and by substituting in lieu thereof the following new paragraph 12:
- "12. Cost Reimbursement—Pending the placing with you of the definitive contract herein referred to, the government will currently reimburse you for proper expenditures hereunder to the extent of seventy-five per cent (75%) of such expenditures. Such reimbursement shall be accomplished upon certification to and verification by the Contracting Officer of vouchers and invoices for materials, tools, labor and other proper costs and charges. For purposes of determining the amounts payable to the Contractor under this contract, and subject to the approval thereof by the Contracting Officer, allowable items of cost will be determined in accordance with Part 2 of Section XV of the Armed Services Procurement Regulations."
- 3. If the foregoing is acceptable to you, kindly so indicate by signing three (3) numbers of this Amendment and return same to the Contracting Officer forthwith, whereupon subject Letter Contract shall be deemed amended accordingly.
- 4. This Amendment has been negotiated pursuant to Public Law 413, 80th Congress.

NOTE: Type or print names under all signatures.

The United States of America

By: John Suchy, Jr. John Suchy, Jr.

Accepted Feb 9, 1951

Coxtracting Officer

Kaiser-Frazer Corporation (Contractor)

(Affix Corporate Seal)

By: Michael Miller
(Name) (Official title)
Michael Miller, Vice Pres.

MCP 71-6A (Rev 10 Jan 50)

EXHIBIT "A" TO AMENDMENT No. 2 TO LETTER CONTRACT AF 33 (038) -18481

HEADQUARTERS AIR MATERIEL COMMAND

Letter Contract

Contract No. AF 33(038)-18481 Wright-Patterson Air Force Base, Dayton, Ohio 20 December 1950

Name: Kaiser-Frazer Corporation

Address: Willow Run, Detroit, Michigan

Dear Sirsi

- 1. An order is hereby placed with you for the furnishing to the Government of the supplies or services set forth in Exhibit "A" attached hereto and hereby made a part hereof.
- 2. Except as otherwise expressly provided to the contrary herein, you are directed, upon your acceptance of this order to proceed immediately to procure the necessary materials, and to commence the manufacture of the supplies or performance of the services, called for herein, and to pursue such work with all diligence to the end that the supplies may be delivered or services performed at the earliest practicable date.
- 3. All applicable clauses (other than any termination clause) now required by Federal Law, Executive Order, or applicable Procurement Regulations to be included in contracts for supplies or services of the kind herein described are incorporated herein by reference.

- 4. By your acceptance hereof, you undertake without delay to enter into negotiations with the Department of the Air Force looking to the execution of a definitive contract which will include all applicable clauses then required by Federal Law, Executive Order and applicable Procurement Regulations to be included in contracts for supplies or services of the kind herein described. The definitive contract will also contain a detailed delivery schedule and prices, terms and conditions as agreed to by the parties which may or may not be at variance with the provisions of this order. It is expected that such definitive contract will be placed with you prior to 28 February 1951..
- 5. You are not authorized to expend or obligate, in furtherance of your performance hereunder, more than \$10,000,000.00 in the aggregate. Pending the execution of a definitive contract the Contractor, shall give advance notification to the Contracting Officer of any proposed subcontract or purchase order bereunder which is either (a) on a cost-plus-fixed-fee basis or (b) on a fixed-price basis exceeding in dollar amount either \$25,000 or five per centum of the amount authorized to be expended hereunder. Pending the execution of a definitive contract, each expenditure, order, subcontract or commitment made by you in furtherance of your performance hereunder, if for an amount that shall exceed the lesser of the amounts specified in (b) above for tools, dies, jigs, fixtures, materials, supplies, parts, equipment, engineering assistance or reproduction or other license rights will be subject to written approval by the Contracting Officer. No contract, regardless of the amount thereof, shall be made by you with any other party for furnishing any of the completed or substantially completed articles, spare parts or work herein-called for, without the written approval of the Contracting Officer as to sources.
- 6. Government Property (a) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by you with the approval of the Contracting Officer, and necessary for the

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performance of this order, shall pass to and vest in the Government upon the delivery of such property by the vendor. Title to other property necessary for the performance of this order, shall pass to and vest in the Government upon (a) the commencement of processing or use of such property in the performance of this order.

(b) The necessary property records in connection with this order will be maintained in accordance with Air Force Manual 69-3 "Industrial Property Accounting for Cost-Plus-A-Fixed-Fee Supply Contracts" dated 19 November 1948, as amended, and other applicable regulations. Government property records will be maintained by an Industrial accountable Property Officer designated for this order by the cognizant AF Representative.

Letter Contract (CPFF)

Amendment No. 3

Amendment No. 3, dated February 26, 1951. This amendment, among other things, extended the expiration date of said prime contract to April 15, 1951. The full text of said amendment is omitted by agreement of the parties.)

Amendment No. 4

HEADQUARTERS AIR MATERIEL COMMAND

MCPPXA13:IJZ:vpw

Wright-Patterson Air Force Base Dayton, Ohio

29 March 1951

Subject: Letter Contract dated 20 December 1950 designated AF 33(038)-18481

Kaiser-Frazer Corporation To: Willow Run Detroit, Michigan

> Amendment No. 4 to subject Letter Contract

- 1. Subject Letter Contract, as amended, placed an order with you for the supplies or services therein described.
- 2. It is now desired to amend subject Letter Contract in the following respects:
 - a. By deleting the words and figures "seventy-five per cent (75%)" as set forth in the fourth-line of paragraph 12 and by substituting in lieu thereof the words and figures "ninety per cent (90%)."
 - b. By adding the following new paragraph 1D to subject Letter Contract:
 - "1D. The Contractor shall be paid 90% of the costs incurred by reason of partial payments made from time to time by the Contractor to any subcontractor hereunder provided that the subcontract contains a partial payments clause not less favorable to the Government than the

partial payments provisions in JPR 5-407.2, and, provided further that the inclusion of such partial payments clause shall have the prior approval of the Contracting Officer, Headquarters, Air Materiel Command, in writing. Each partial payment made on any subcontract hereunder shall be specifically approved in writing by the Contracting Officer."

- 3. If the foregoing is acceptable to you, kindly so indicate by signing three (3) numbers of this Amendment and return same to the Contracting Officer forthwith, whereupon subject Letter Contract shall be deemed amended accordingly.
- 4. This Amendment has been negotiated pursuant to Public Law 413, 80th Congress.

NOTE: Type or print names under all signatures.

The United States of America .

By: John Suchy, Jr.

John Suchy, Jr.,

Contracting Officer

. (Affix Corporate Seal)

Accepted Apr 3 1951

Kaiser-Frazer Corporation (Contractor)

By: Michael Miller (Name) (Official Title) Michael Miller Executive Vice President

Amendments Nos. 5, 6, 7, 8, 9, 10 and 11

Amendments Nos. 5, 6, 7, 8, 9, 10 and 11 are omitted by agreement of the parties.

Amendment No. 12

Amendment No. 12, dated June 18, 1951. (By this amendment the Government recognized and consented to the assignment of rights conferred and the duties imposed by said prime contract on Kaiser-Frazer Corporation, to Kaiser Manufacturing Corporation, and Kaiser Manufacturing Corporation became the Contractor under said prime contract. The full text of said amendment is omitted by agreement of the parties.)

CPEF

Amendment No. 13

HEADQUARTERS AIR MATERIEL COMMAND

MCPPXA13/EHM/mlw

• Wright-Patterson Air Force Base Dayton, Ohio

37 June 1951

Subject: Letter Contract dated 20 December 1950 Designated AF 33(038)-18481

· To: Kaiser Manufacturing Corporation

Willow Run Detroit, Michigan

> Amendment No. 13 to subject Letter Contract

- 1. Subject Letter Contract, as amended, placed an order with you for the services or supplies therein described.
- 2. It is now desired to further amend subject Letter Contract in the following respects:
 - a. By adding the following new paragraph:
 - "1F. The Government may loan to the contractor for use in the performance of this contract, in accordance with the provisions of War

Department Procurement Regulation 7-314, such Government-Owned Property as in the opinion of the Contracting Officer will facilitate the expeditious completion of this contract. However, this shall not be construed as affecting the bailment of such property, nor as a commitment that such loan will be made."

- b. By increasing the amount authorized to be expended or obligated as set forth in paragraph 5 of subject letter contract from \$25,000,000.00 to \$38,200,000.00, an increase of \$13,200,000.00.
- c. Except insofar as subject letter contract may have been terminated, it is now desired to extend the expiration date to 15 August 1951. Such date is hereby extended accordingly.
- 3. If the foregoing is acceptable to you, kindly so indicate by signing three (3) copies of this Amendment and return same to the Contracting Officer forthwith whereupon subject letter contract shall be deemed amended accordingly.
- 4. This instrument has been negotiated pursuant to Public Law 413, 80th Congress.

NOTE: Type or print names under all signatures.

The United States of America.

By: John Suchy, Jr. John Suchy, Jr. (Contracting Officer)

(Affix Corporate Seal)

Accepted June 30 1951

Kaiser Manufacturing Corporation (Contractor)

By: John Hallett.

(name) (Official Title)

John Hallett Executive Vice-President and General Manager

The Accounting and Disbursing Officer, Central Air Procurement District, West Warren Avenue & Lonyo Boulevard, Detroit 32, Michigan, is designated as the Officer to make payments in accordance with this contract.

The sum to be expended by the Government hereunder is chargeable to the following allotment, the available balance of which is sufficient to cover same:

57X4100 163-5000 P113(1)-09 S33-038

PR: 52037

Buyer: John Suchy, Jr. (MCPPXA62)

Amendment No. 14

Amendment No. 14, dated July 23, 1951 is omitted by Agreement of the Parties.

Amendment No. 15

Amendment No. 15, dated August 9, 1951. (This amendment, among other things, extended the expiration date of said prime contract to September 30, 1951. The full text of said amendment is omitted by agreement of the parties.)

Amendments Nos., 16 and 17

Amendments Nos. 16 and 17 are omitted by Agreement of the Parties.

Amendment No. 18

Amendment No. 18, dated September 25, 1951. (This amendment extended the expiration date of said prime contract to October 31, 1951. The full text of said amendment is omitted by agreement of the parties.)

Amendment No. 19

Amendment No. 19, dated October 30, 1951. (This amendment extended the expiration date of said prime contract to December 31, 1951. The full text of said amendment is omitted by agreement of the parties.)

Amendment No. 20

CPFF

HEADQUARTERS / AIR MATERIEL COMMAND

MCPPXA13/EES/gh

Wright-Patterson Air Force Base Dayton, Ohio

21 November 1951

Subject: Letter Contract dated 20 December 1950

designated AF 33(038)-18481

o: Kaiser Manufacturing Corporation

Willow Run Detroit, Michigan

> Amendment No. 20 to subject Letter Contract

1. Subject Letter Contract, as amended, placed an order with you for the supplies or services therein described.

- 2. It is now desired to further amend subject Letter Contract as follows:
 - a. By increasing the amount authorized to be expended or obligated as set forth in paragraph 5 of subject letter contract from \$53,842,000.00 to \$65,600,000.00, an increase of \$11,758,000.00
 - b. By revising the first sentence of paragraph, 12 thereof as follows:

"Pending the placing with you of the definitive contract herein referred to, the Government will currently reimburse you for proper expenditures hereunder to the extent of one hundred per cent (100%) of audited costs and ninety per cent (90%) of proper expenditures on vouchers as submitted prior to audit."

Subject to the prior approval of the Contracting Officer.

- 3. If the foregoing is acceptable to you, kindly so indicate by signing three (3) copies of this Amendment and return same to the Contracting Officer forthwith whereupon subject Letter Contract shall be deemed amended accordingly.
- 4. This instrument has been negotiated pursuant to Public Law 413, 80th Congress.

NOTE: Type or print names under all signatures.

The United States of America

By: G. Graham Whipple, 1st. Lt., USAF (Contracting Officer)

Accepted Nov 23 1951,

Kaiser Manufacturing Corporation (Contractor)

By: J. F. Reis Executive Vice President J. F. Reis

(Name) (Official Title)

(Affix Corporate Seal)

168 Murray Exhibit No. 1—Kaiser Prime Contract; Murray Exhibit 24—Kaiser-Murray Subcontract

The Accounting and Disbursing Officer, Central Air Procurement District, West Warren Avenue & Lonyo Boulevard, Detroit 32, Michigan, is designated as the officer to make payments in accordance with this contract.

The sum to be expended by the Government hereunder is chargeable to the following allotment, the available balance of which is sufficient to cover same:

97-1110045.080 163-5000 P903(1)-09 S33-038 \$10,000,000.00 97-1110045.080 163-5000 P903(1)-08 S33-038 1,758,000.00

PR: 52037

Buyer: W. S. Federspiel (MCPPXA62)

Amendment No. 21

Amendment No. 21, dated December 21, 1951. (This amendment extended the expiration date of said prime contract to March 31, 1952. The full text of said amendment is omitted by agreement of the parties.)

MURRAY EXHIBIT 2A

Original subcontract between Kaiser and Murray dated March 23, 1951, entered into under Prime Contract No. AF 33(038)-18481.

THE MURRAY CORPORATION OF · AMERICA

7700 Russell Street / Detroit 11, Michigan

March 23, 1951

Kaiser-Frazer Corporation Willow Run, Michigan

Gentlemen:

With reference to your proposal of February 19, 1951, as supplemented by your letter of February 27, 1951, and our discussions with you since those dates, we will be pleased to enter into a subcontract with you under your Letter Contract AF 33 (038)-18481 with the United States Government as amended by Amendments Nos. 1 and 2 (copies of which have been submitted to us), covering your requirements of the various parts listed in your proposal of February 19th, subject to the following conditions:

The Subcontract will be on a fixed price basis, subject to price redetermination upwards or downwards. The fixed price will be negotiated between us within two weeks from the date hereof. The first price redetermination shall take place after the manufacture of the first forty-eight sets of parts and shall be retroactive to the first set; thereafter prices may be redetermined at the request of either party but not oftener than at ninety day intervals. Except for the first price redetermination, redetermined prices shall operate prospectively only and shall be effective from the date of the request for the applicable price redetermination. For the purpose of negotiating revised prices, we agree to submit all such cost data as you may reasonably request and in addition you shall have the right to make suclaudits of our books and records pertaining to the cost of performing the Subcontract as you deem necessary; provided, however, that we shall not be required to furnish. nor shall you have the right to audit, any of the details with respect to the general and administrative expenses

entering into such costs. As to such general and administrative expenses, we will either:

- (a) furnish you with a certificate of the independent certified public accountants whom we employ to make our annual audit to the effect that the amount and allocation to the Subcontract of such expenses are proper and in accordance with sound accounting principles; or
- (b) agree with you upon a fixed rate for general and administrative expenses which shall not be subject to price redetermination,

as you may elect. Nothing herein shall preclude any right of the Government to make audits of our books and records, including, but not limited to, general and administrative expenses.

- 2. The Government shall provide us with the machine tools and related facilities required by us, all without cost to us.
- 3. Certain jigs, checking fixtures and gauges required by us will be furnished by you without cost to us. In addition, you agree to give us a separate purchase order or purchase orders covering the acquisition of all special tooling that we will require. Such special tooling will be furnished on a basis to be agreed upon. Special tooling produced by us will be at our prevailing tool selling rate.
- 4. It is understood that your Letter Contract with the Government (and the definitive contract to be executed pursuant thereto) will be amended so that there may be included in the Subcontract, and accordingly the Subcontract will provide for, partial payments in substantially the same manner as provided in APR 5-407.2(1) except that payments shall be 90% of cost instead of 75%. We agree to furnish to you such information and to allow you to conduct such audits as may be required by the Government under the provisions of said Article in respect of requests for partial payments. You agree subject to the provisions of such Article to make partial payments to us.

It is further understood that as soon as your Letter Contract is so amended, requests for partial payments may be made by us in respect of costs incurred by us hereunder.

- 5. It is understood that there is included in your Letter Contract with the Government and that there shall be included in your definitive contract with the Government and extended to us the form of authorization and consent set forth in ASPR 9.106 as to the use of any patented inventions in connection with the manufacture of your requirements to the end that we shall be fully protected against any and all liability in respect of any infringement of patent rights in connection with such manufacture. The Subcontract will contain appropriate provisions regarding inspection, changes, termination, excusable delay, payment and delivery schedules as may be mutually satisfactory, a disputes clause as set forth in ASPR 7-103.12, together with such other contract provisions, mutually satisfactory, as vou may be required to include in the Subcontract by reason of Governmental regulations.
- 6. Pending the preparation and execution of a definitive subcontract, we will perform engineering studies and preliminary work and incur expenses in connection therewith, and it is agreed that in the event your contract with the Government is terminated prior to making of a definitive subcontract between us, or in the event a definitive subcontract is not entered into between us for any reason, you will reimburse us for all costs incurred by us hereunder, together with reasonable compensation for all work performed by us, calculated in a manner similar to the manner of calculating compensation to you under Paragraph 7 of your Letter Contract with the Government, provided that such costs and compensation shall not exceed the sum of \$750,000.00.
- 7. The form of definitive subcontract between us shall be negotiated and executed as soon as possible and in any event on or before August 1, 1951, unless such time is extended by mutual agreement, subject to the fact that in this connection it is recognized that you may not be in a position to execute such a definitive subcontract until a definitive contract between you and the Government is

executed. Accordingly, it is understood that you will endeavor to negotiate and complete a definitive contract with the Government as soon as may be.

- 8. All costs incurred by us in anticipation of this Subcontract shall be considered as costs incurred by us hereunder, insofar as such costs are proper costs under applicable Government regulations.
- 9. It is understood that this Letter Agreement is subject to the applicable provisions of your Letter Contract, as amended by Amendments 1 and 2 and to the approval of your Contracting Officer in the form set forth below.
- 10. It is further understood that we may request the Government to include in the definitive subcontract between us a provision to the effect that in the event of termination thereof, settlement may be made direct with the Government.

If the foregoing is acceptable to you, kindly so indicate by signing a copy of this letter and return same to us forthwith, whereupon this letter shall be deemed to constitute a letter agreement between us.

Very truly yours,

The Murray Corporation of America By J. H. Barrett

Controller

Accepted:

Kaiser-Frazer Corporation

By L. S. MacKay

The above letter agreement under Contract Number AF 33(038)-18481 is approved under the provisions of such prime contract, but this approval shall not relieve the prime contractor of any obligation or responsibility which it may have under the prime contract, shall be without prejudice to any right or claim of the Government thereunder or under this letter agreement, and shall not create any obligation of the Government to the vendor under this letter agreement.

F. T. Bretney, Capt. USAF Contracting Officer

MURRAY EXHIBIT No. 2B

Amendment to Original Subcontract dated August 15, 1951, between Kaiser and Murray.

August 15, 1951

The Murray Corporation of America 7700 Russell Street Detroit 11, Michigan

Gentlemen:

- This refers to the Letter Agreement dated March 23, 1951 between Kaiser-Frazer Corporation and The Murray Corporation of America providing for the production by The Murray Corporation of America of certain parts required under our Letter Contract #AF 33(038)-18481 with the United States Government.

This is to advise that such Letter Contract #AF 33(038)-18481 has been assigned by Kaiser-Frazer Corporation to its wholly-owned subsidiary, Kaiser Manufacturing Corporation, previously known as Phoenix Iron Works Corporation, which assignment has been approved by the United States Government by Amendment No. 12, dated June18, 1951, to such Letter Conract. The actual work, however, will be performed by Kaiser-Frazer Corporation under subcontracts between the two corporations.

For your information, arrangements have been made with Bank of America National Trust and Savings Association, Mellon National Bank and Trust Company and Bankers Trust Company to furnish funds to Kaiser Manufacturing Corporation with which to finance such defense work.

In light of such assignment, therefore, it has become necessary that the Letter Agreement between The Murray Corporation of America and Kaiser-Frazer Corporation should be assigned to Kaiser Manufacturing Corporation, and this is to confirm that such Letter Agreement, as

amended, shall be, and hereby is, assigned to and assumed by Kaiser Manufacturing Corporation as of June 18, 1951. Kaiser-Frazer Corporation hereby agrees that such assignment of such Letter Agreement to Kaiser Manufacturing Corporation shall not release Kaiser-Frazer Corporation from any obligations thereunder, and that it will furnish a guaranty of the obligations of Kaiser Manufacturing Corporation under such Letter Agreement to The Murray Corporation of America.

Under the provision of Paragraph 4 of the Letter Agreement, provision was made for partial payments subject to the provisions of JPR 5-407.2(1) as set forth below and subject to amendment of the Letter Contract to include such a provision for partial payments and inclusion of such a provision in the Definitive Contract with the Government.

This is to advise that the following paragraph has now been added to the Letter Contract with the Government:

"1D. The Contractor shall be paid 90% of the costs incurred by reason of partial payments made from time to time by the Contractor to any subcontractor hereunder provided that the subcontract contains a partial payments clause not less favorable to the Government than the partial payments provision in JPR 5-407.2, and provided further that the inclusion of such partial payments clause shall have the prior approval of the Contracting Officer, Headquarters, Air Materiel Command, in writing. Each partial payment made on any subcontract hereunder shall be specifically approved in writing by the Contracting Officer."

In accordance with the requirements of the above amendment to the Letter Contract with the Government, said Letter Agreement of March 23, 1951, is amended by adding thereto a new paragraph No. 11, reading as follows:

"11. Partial payments.—Partial payments, which are hereby defined as payments prior to delivery, on

Murray Exhibit No. 2B--Amendment to Kaiser-Murray Subcontract

work in progress for the Government under this contract, may be made upon the following terms and conditions.

- The Contracting Officer may, from time to (a) time, authorize partial payments to The Murray Corporation of America (hereinafter called "the Contractor") upon property acquired or produced by it for the performance of this contract: Provided, that such partial payments shall not exceed 90 percent of the cost to the Contractor of the property upon which payment is made, which cost shall be determined from evidence submitted by the Contractor and which must be such as is satisfactory to the Contracting Officer: Provided further, that in no event shall the total of unliquidated partial payments (see (c) ... clow) and of unliquidated partial payments, if any, made under this contract, exceed 80 percent of the contract price. of supplies still to be delivered.
- (b) Upon the making of any partial payment under this contract, title to all parts, materials, inventories, work in process and non-durable tools theretofore acquired or produced by the Contractor for the performance of this contract, and properly chargeable thereto under sound accounting practice, shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor for the performance of this contract and properly chargeable thereto as aforesaid shall vest in the Government forthwith upon said acquisition or production: Provided, that nothing herein shall deprive the Contractor of any further partial or final payments due or to become due hereunder; or relieve the Contractor, Kaiser-Frazer Corporation, or the Government of any of their respective rights or obligations under this contract.
- (c) In making payment for the supplies furnished hereunder, there shall be deducted from the contract price therefor a proportionate amount of the partial payments theretofore made to the Contractor, under the authority herein contained:

(d) It is recognized that property (including, without limitation, completed supplies, spare parts, drawings, information, partially completed supplies, work in process, materials, fabricated parts and other things called for berein) title to which is or may hereafter become vested in the Government pursuant to this Article will from time to time be used by or put in the care, custody or possession of the Confractor in connection with the performance of this contract. The Contractor, either before or after receipt of notice of termination at the option of the Government, may acquire or dispose of property to which title is vested in the Government under this Article, upon terms approved by the Contracting Officer, provided, that, after receipt of notice of termination, any such property that is a part of termination inventory may be acquired or disposed of only in accordance with the provisions of the termination article of this contract and applicable laws and regulations. agreed price (in case of acquisition by the contractor) or the proceeds received by the Contractor (in case of any other disposition), shall, to the extent that such price and proceeds do not exceed the unliquidated balance of partial payments hereunder, be paid or credited to the Government as the Contracting Officot shall direct; and such unliquidated balance shall the reduced accordingly. Current production scrap may be sold by the Contractor without approval ofthe Contracting Officer but the proceeds will be applied as provided in this paragraph (d), provided: that any such scrap which is a part of termination inventory may be sold only in accordance with the provisions of the termination article of this contract and applicable laws and regulations. Upon liquidation of all partial payments hereunder or upon completion of deliveries called for by this contract, title to all property (or the proceeds thereof) which has not been delivered to and accepted by the Governthent under this contract or which has not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title

Murray Exhibit No. 2B—Amendment to Kaiser-Murray Subcontract

has vested in the Government under this Article shall vest in the Contractor.

- (e) The article of this contract captioned 'Liability for Government-furnished Property' and any other provision of this contract defining liability for Government-furnished property shall be inapplicable to property to which the Government shall have acquired title solely by virtue of the provisions of this Article. The provisions of this Article shall not relieve the Contractor from risk of loss or destruction of or damage to property to which title vests in the Government under the provisions hereof.
- (f) If this contract (as heretofore or hereafter supplemented or amended) contains provision for Advance Payments, and in addition if at the time any partial payment is to be made to the Contractor under the provisions of this partial payments article any unliquidated balance of advance payments is outstanding, then notwithstanding any other provision of the Advance Payments Article of this contract the net amount, after appropriate deduction for liquidation of the advance payment, of such partial payment shall be deposited in the special bank account or accounts maintained as required by the provisions of the Advance Payments Article, and shall thereafter be withdrawn only pursuant to such provisions."

It is understood that the amendment of the Letter. Agreement dated March 23, 1951, as provided above, is subject to the approval of the Contracting Officer, Headquarters, Air Materiel Command, in writing, and that any partial payments are subject to prior approval of the Contracting Officer as set forth above.

We should like to confirm also that the Letter Agreement should be, and hereby is, amended further as follows:

 The attached Exhibit "A" should be, and hereby is, attached to the Letter Agreement as a new Paragraph #12.

- 2. Paragraph #6 of the Letter Agreement shall be, and hereby is, amended by the deletion of the sum "\$750,000" and the replacement of such sum by the sum of "\$2,500.000".
- 3. Paragraph #7 of the Letter Agreement shall be, and hereby is, amended by the deletion of the date "August 1, 1951" and the replacement of such date by the date of "September 30, 1951".

If the foregoing is agreeable to you, kindly so indicate by signing in the space provided for below, whereupon the Letter Agreement dated March 23, 1951 shall be deemed to be assigned and amended accordingly, subject to the prior approval of the Contracting Officer, Headquarters, Air Materiel Command, as set forth above.

Very truly yours,

Kaiser-Frazer , Corporation

L. S. MacKay

Director of Purchases

ERG:lk Enc. .

Accepted: Kaiser Manufacturing Corporation By John Hallett

Accepted: The Murray Corporation of America By B. C. Gould; President

The above Letter Agreement under Contract Number AF 33(038)-18481 is approved under the provisions of such prime contract, but this approval shall not relieve the prime contractor of any obligation or responsibility which it may have under the prime contract, shall be without prejudice to any right or claim of the Government thereunder or under this Letter Agreement, and shall not create any obligation of the Government to the vendor under this Letter Agreement.

F. P. Bretney, Capt USAF Contracting Officer

Murray Exhibit No. 2B—Amendment to Kaiser-Murray Subcontract

The above partial payments clause to the Letter Agreement dated March 23, 1951, between Kaiser-Frazer Corporation and The Murray Corporation of America under Contract Number AF 33(038)-18481 is approved under the provisions of such prime contract with special reference to Paragraph 1D thereof, but this approval shall not relieve the prime contractor of any obligation or responsibility which it may have under the prime contract, shall be without prejudice to any right or claim of the Government thereunder or under this Letter Agreement, and shall not create any obligation of the Government to the vendor under this Letter Agreement.

Charles F. Barclay, Major, USAF Contracting Officer Headquarters Air Materiel Command

EXHIBIT A

Amended by 10/4/51 letter

Inspection. (a) All material and workmanship shall be subject to inspection and test by representatives of the Government. For this purpose, you shall allow at all fines inspectors and other Government personnel free access to the plant and operations and shall furnish such facilities, supplies and services as may be required for this work.

(b) You shall provide an acceptable and complete system covering the inspection of all material, fabrication methods and finished parts. This system shall be approved by the Government representative who shall be assigned at your plant. Records of all such inspection work shall be kept complete and shall be available to the Government representative at all times. The work of construction shall at all times be open to the duly authorized Government representative for the purpose of inspection, and every facility shall be afforded such inspec-

tors for the prosecution of their work. The Government representatives shall have the right to require replacement of parts not in accordance with the approved drawings or showing inferior workmanship or material, or which, in his opinion, are unsuited for the purpose intended or seriously overweight. You shall inform the inspector when materials or parts are ready for inspec-You shall, in the manufacture of the articles to be supplied under this contract, be required to use jigs, fix-· tures, and/or other devices and appliances in all processes where such use is conducive to interchangeability and uniformity of the product, of such character as will reduce the necessity for selective assembly to the least practicable minimum, and whenever the inspector shall determine that any jig, fixture, device or other appliance is incorrect, worn, damaged, or defective to such an extent as to adversely affect basic interchangeability of the article manufactured, he shall so inform you in the same manner as applied to the rejection of defective material presented for acceptance by the Government representative, and you shall not thereafter use the said jig, fixture, or appliance, in its incorrect, worn, damaged, or defective form in the manufacture of articles intended for delivery under this contract. The inspection and test by the Government of any supplies or lots thereof does not relieve you from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to final acceptance. Except as otherwise provided in this contract, final acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(c) Your plant at 7700 Russell Street, Detroit, Michigan is designated as a point for government source inspection of all the supplies to be furnished under this agreement; provided, however, that at the option of the Contracting Officer any of said supplies may be accepted without Government inspection, and in such event the Contractor, promptly after each delivery without Government inspection, shall furnish to the Finance Officer designated to make payments under this contract, and to the

Murray Exhibit No. 2C-Amendment to Kaiser-Murray Subcontract

Contracting Officer, a certificate reading substantially as follows:

"I hereby certify that I did, on the day of, 19...., ship via, in accordance with shipping instructions issued by the Contracting Officer, the supplies called for by

Contract No. ; that such supplies were in the quantities and of the quality called for, and were in all respects in accord with the applicable specifications."

(d) Notwithstanding any provisions of the certificate above referred to, your liability with respect to the supplies covered by this contract will, after inspection by the Government, or after the expiration of a reasonable time following delivery to the Government within which inspection may be made, whichever occurs first, be limited (except as to supplies rejected upon such inspection) to liability for latent defects, fraud or such gross mistakes as amount to fraud.

MURRAY EXHIBIT No. 2C

Amendment to Original Subcontract dated October 4, 1951, between Kaiser and Murray.

KAISER MANUFACTURING CORPORATION Willow Run, Michigan

October 4, 195!

The Murray Corporation of America 7700 Russell Street Detroit 11, Michigan

Gentlemen:

This refers to the Letter Agreement between Kaiser Frazer Corporation and The Murray Corporation of America dated March 23, 1951, as amended August 15, 1951, which has been assigned to Kaiser Manufacturing

Corporation, providing for the production by The Murray Corporation of America of certain parts required under our Letter Contract with the United States Government. It is desired to further amend the letter dated August 15th as follows:

· (a) In Exhibit A, Paragraph (c),

"Your plant at 7700 Russell Street, Detroit, Michigan is designated as a point for government source inspection of all the supplies to be furnished under this agreement;"

is to be changed to read:

"Your plant at 7700 Russell Street, Detroit, Michigan is designated as the point for Government source Inspection on all supplies to be shipped to Kaiser Manufacturing Corporation, Willow Run, Mich. and is designated as the point for final inspection and acceptance by the Government of all supplies which are to be shipped direct to the Government;"

(b) The following rating is hereby extended for your use as subcontractor under Supply Contract AF 33(038)-18481: DO A-1 Certified under CMP Regulation #3.

If the foregoing is acceptable to y kindly so indicate by signing three copies of this let and return same to Kaiser Manufacturing Corporation, whereupon such Letter Contract shall be deemed amended accordingly, subject to approval of the Contracting Officer.

Very truly yours,

Kaiser Manufacturing Corporation L. S. MacKay Director of Purchases

Accepted:

The Murray Corporation of America B. C. Gould The above Letter Agreement under Contract No. AF 33 (038)-18481 is approved under the provisions of such prime contract, but this approval shall not relieve the prime contractor of any obligation or responsibility which it may have under the prime contract, shall be without prejudice to any right or claim of the Government thereunder or under this Letter Agreement, and shall not create any obligation of the Government to the vendor under this Letter Agreement.

F. P. Bretney, Capt USAP Contracting Officer

MURRAY EXHIBIT No. 3

Armed Services Procurement Regulations (A.S. P.R.) 5-407.2(1), (Photostatic Copy taken from 1947 Supplement Code of Federal Regulations Title 10, Chapter VIII, Paragraph 805.407-2, Effective November 1, 1947, Printed in 12 F. R. 7693).

§ 805.407-2 Partial payments—(a) When payments are not to exceed 75 percent of the cost of the property. In those cases where it is contemplated that partial payments in an amount not to exceed 75 percent of the cost to the contractor of the property will be made, the contract will contain the following article:

Partial payments: Partial payments, which are hereby defined as payments prior to delivery, on work in progress for the Government under this contract, may be made upon the following terms and conditions.

(a) The Contracting Officer may, from time to time, authorize partial payments to the Contractor upon property acquired or produced by it for the performance of this contract: Provided, That such partial payments shall not exceed 75 percent of the cost to the Contractor of the property upon which payment is made, which cost shall

be determined from evidence submitted by the Contractor and which must be such as is satisfactory to the Contracting Officer: Provided further, That in no event shall the total of unliquidated partial payments (see (c) below) and of unliquidated advance payments, if any, made under this contract, exceed 80 percent of the total contract price of supplies still to be delivered.

- (b) Upon the making of any partial payment under this contract, title to all parts, materials, inventories, work in process and non-durable tools theretofore acquired or produced by the Contractor for the performance of this contract, and properly chargeable thereto under sound accounting practice shall forthwith vest in the Government; and titl to all like property thereafter acquired or produced by the Contractor for the performance of this contract and properly chargeable thereto as aforesaid shall vest in the Government forthwith upon said acquisition or production: Provided, That nothing herein shall deprive the Contractor of any further partial or final payments due or to become due hereunder: or relieve the Contractor or the Government of any of their respective rights or obligations under this contract.
- (c) In making payment for the supplies furnished hereunder, there shall be deducted from the contract price therefor a proportionate amount of the partial payments theretofore made to the Contractor, under the authority herein contained.
- (d) It is recognized that property (including, without limitation completed supplies, spare parts, drawings, information, partially completed supplies, work in process, materials, fabricated parts and other things called for herein) title to which is or may hereafter become vested in the Government pursuant to this Article will from time to time be used by or put in the care, custody or possession of the Contractor in connection with the performance of this contract. The Contractor, either before or after receipt of notice of termination at the option of the Government, may acquire or dispose of property to which title is vested in the Government under this Article, upon

Murray Exhibit No. 3—Armed Services Procurement Regulations

terms approved by the Contracting Officer, provided, that after receipt of notice of termination, any such property that is a part of termination inventory may be acquired or disposed of only in accordance with the provisions of the termination article of this contract and the applicable law and regulations. The agreed price (in case of acquisition by the contractor) or the proceeds received by the contractor (in case of any other disposition), shall, to the extent that such price and proceeds do not exceed the unliquidated balance of partial payments hereunder, be paid or credited to the Government as the Contracting Officer shall direct, and such unliquidated balance shall be reduced accordingly. Current production scrap may be sold by the Contractor without approval of the Contracting Officer but the proceeds will be applied as provided in this paragraph (d), provided that any such scrap which is a part of termination inventory may be sold only in accordance with the provisions of the termination art le of this contract and applicable laws and regulations. Upon liquidation of all partial payments hereunder or upon completion of deliveries called for by this contract. title to all property (or the proceeds thereof) which has not been delivered to and accepted by the Government under this contract or which has not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title, has vested in the Government under this Article shall vest in the Contractor.

- (e) The article of this contract captioned "Liability for Government-furnished Property" and any other provision of this contract defining liability for Government-furnished property shall be inapplicable to property to which the Government shall have acquired title solely by virtue of the provisions of this Article. The provisions of this Article shall not relieve the Contractor from risk of loss or destruction of or damage to property to which title vests in the Government under the provisions hereof.
 - (f) If this contract (as heretofore or hereafter supplemented or amended) contains provision for Advance Payments, and in addition if at the time any partial payment

this partial payments article any unliquidated balance of advance payments is outstanding, then notwithstanding any other provision of the Advance Payments Article of this contract the net amount, after appropriate deduction for liquidation of the advance payment, of such partial payment shall be deposited in the special bank account of accounts maintained as required by the provisions of the Advance Payments Article, and shall thereafter be withdrawn only pursuant to such provisions.

(b) When payments are not to exceed 90 percent of direct labor and material costs. In those cases where it is contemplated that partial payments in an amount not to exceed 90 percent of the direct labor and material costs to the contractor will be made, the contract will contain the following article:

Partial payments. Partial payments, which are hereby defined as payments prior to delivery, on work in progress for the Government under this contract, may be made upon the following terms and conditions.

- authorize partial payments to the Contractor upon property acquired or produced by it for the performance of this contract: Provided, That such partial payments shall not exceed 90 percent of the direct labor and direct material costs to the Contractor of the property upon which payment is made, which costs shall be determined from evidence submitted by the Contractor and which must be such as is satisfactory to the Contracting Officer; Provided further. That in no event shall the total of unliquidated partial payments (see (c) below) and of unliquidated advance payments, if any, made under this contract, exceed 80 percent of the contract price of supplies still to be delivered.
- (b) Upon the making of any partial payment under this contract, title to all parts, materials, inventories, work in process and non-durable tools theretofore acquired or produced by the Contractor for the performance of this

Murray Exhibit No. 3—Armed Services Procurement Regulations

contract; and properly chargeable thereto under sound accounting practice, shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor for the performance of this contract and properly chargeable thereto as aforesaid shall vest in the Government forthwith upon said acquisition or production: *Provided*, That nothing herein shall deprive the Contractor of any further partial or final payments due or to become due hereunder; or relieve the Contractor or the Government of any of their respective rights or obligations under this contract.

- (c) In making payment for the supplies furnished hereunder, there shall be deducted from the contract price therefor a proportionate amount of the partial payments theretofore made to the Contractor, under the authority herein contained.
- It is recognized that property (including, without limitation, completed supplies, spare parts, drawings, information, partially completed supplies, work in process, materials, fabricated parts and other things called for . herein) title to which is or may hereafter become vested in the Government pursuant to this Article will from time to time be used by or put in the care, custody or posses: sion of the Contractor in connection with the performance of this contract. The Contractor, either before or after receipt of notice of terinination at the option of the Government, may acquire or dispose of property to which title is vested in the Government under this Article, upon terms approved by the Contracting Officer, provided, that. after receipt of notice of termination, any such property that is a part of termination inventory may be acquired or disposed of only in accordance with the provisions of the termination article of this contract and applicable laws. and regulations. The agreed price (in case of acquisition by the contractor) or the proceeds received by the Contractor (in case of any other disposition), shall, to the extent that such price and proceeds do not exceed the urfiguidated balance of partial payments hereunder, be paid or credited to the Government as the Contracting

Officer shall direct; and such unliquidated balance shall be reduced accordingly. Current production scrap may be sold by the Contractor without approval of the Contracting Officer but the proceeds will be applied as provided in this paragraph (d), provided that any such scrap which is a part of termination inventory may be sold only in accordance with the provisions of the termination article of this contract and applicable laws and regulations. Upon liquidation of all partial payments hereunder or upon completion of deliveries called for by this contract, title to all property (or the proceeds thereof) which has not been delivered to and accepted by the Government under this contract or which has not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this Article shall vest in the Contractor.

- (e) The article of this contract captioned "Liability for Government-furnished Property" and any other provision of this contract defining liability for Government-furnished property shall be inapplicable to property to which the Government shall have acquired title solely by virtue of the provisions of this Article. The provisions of this Article shall not relieve the Contractor from risk of loss or destruction of or damage to property to which title vests in the Government under the provisions hereof.
- (f). If this contract (as heretefore or hereafter supplemented or amended) contains provision for Advance Payments, and in addition if at the time any partial payment is to be made to the Contractor under the provisions of this partial payments article any unliquidated balance of advance payments is outstanding, then notwithstanding any other provision of the Advance Payments Article of this contract the net amount, after appropriate deduction for liquidation of the advance payment, of such partial payment shall be deposited in the special bank account or accounts maintained as required by the provisions of the Advance Payments Article, and shall thereafter be withdrawn only pursuant to such provisions.

MURRAY EXHIBIT No. 4

Prime Contract No. AF 33 (038)-18132 between Wright Aeronautical Corporation and the United States Government in Effect on January 1, 1952.

UNITED STATES OF AMERICA DEPARTMENT OF THE AIR FORCE

Dayton, Ohio 30 October 1953 (Place) (Date)

I hereby certify that the attached documents consist of a photostatic copy of the original executed Prime Contract No. AF 33(038) 18132, dated 12 December 1950, between the Department of the Air Force and Wright Aeronautical Corporation, and Amendments No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, on file in the Contract Files Section Procurement Support Branch, Procurement Division, Headquarters Air Materiel Command, Wright-Patterson Air Force Base, Ohio.

Ruth I. Sawyer Chief, Contract Files Section Procurement Support Branch Procurement Division

I hereby certify that Ruth I. Sawyer, who signed the foregoing certificate, is the Chief, Contract Files Section, Procurement Support Branch, Procurement Division, Headquarters Air Materiel Command, Wright-Patterson Air Force Base, Ohio, and that to this certification as such full faith and credit are and ought to be given.

In testimony whereof I, Harold E. Talbott, Secretary of the Air Force, have hereunto caused the seal of the Department of the Air Force to be affixed and may name to be subscribed by the Administrative

190 Murray Exhibit No. 4-Wright Prime Contract

Assistant to the Secretary of the Department, at the City of Washington, this 30th day of October 1953.

Harold E. Talbott Secretary of the Air Force

By Philip J. Curran, Deputy Administrative Assistant.

DO-01 Certified under NPA Regulation No. 2.

Contract No. AF 33(038)-18132

Carl F. Schluh Contracting Officer

LETTER CONTRACTS BETWEEN DEPARTMENT OF THE AIR FORCE

and

WRIGHT AERONAUTICAL CORPORATION

(Contractor.)

EES:nji

Contract For: 1,078 Type YJ65-W-1 Engines

Place: Air Materiel Command, Wright Patterson Air Force Base, Dayton, Ohio

Administrative Information: The Accounting and Disbursing Office USAF, AF Procurement Field Office, 67 Broad Street, New York 4, New York is designated as the officer to make payments in accordance with this contract.

The sums to be expended by the Government hereunder are chargeable to the following allotments, the available balances of which are sufficient to cover the same:

57X4100 163-5000 P112.(2)-09 S33-038 \$2,500,000.00

The Office having overall administrative responsibility for this contract is as designated below and Contractor's Invoices or Vendor's Shipping Documents used as Invoices shall be made out to the Finance Officer designated to make payment hereunder, and shall be sent by the Contractor to the Administrative Office listed below for recording and forwarding to the Finance Officer for payment:

Point of Inspection and Acceptance and F.O.B. Point:

Contractor's Plant, Wood-Ridge, New Jersey

Type Contract Contemplated: Fixed Price

Purchase Request No. 135281

Buyer: Carl F. Schlub (MCPPXF5)

Equipment Class: 02-A

Type Price Redetermination anticipated in Definitive Contract: Form IIB

This instrument has been negotiated pursuant to Section 2(c) (10) of Public Law 413, 80th Congress.

HEADQUARTERS AIR MATERIEL COMMAND

Letter Contract

Contract No. AF 33(038)-18132 Wright-Patterson Air Force Base, Dayton, Ohio

12 December 1950

Name: Wright Aeronautical Corporation

Address: Wood-Ridge, New Jersey

Dear Sirs:

1. An order is hereby placed with you for the furnishing to the Government of the supplies or services set forth in Exhibit "A" attached hereto and hereby made a part hereof.

- 2. Except as otherwise expressly provided to the contrary herein, you are directed upon your acceptance of this order to proceed immediately to procure the necessary materials and to commence the manufacture of the supplies or performance of the services, called for herein, and to pursue such work with all diligence to the end that the supplies may be delivered or services performed at the earliest practicable date.
 - 3. (Deleted.)*
- 4. By your acceptance hereof, you undertake without delay to enter into negotiations with the Department of the Air Force looking to the execution of a definitive contract which will include all. *** The definitive contract will also contain a detailed delivery schedule and prices, terms and conditions as agreed to by the parties which may or may not be at variance with the provisions of this order. It is expected that such definitive contract will be placed with you prior to 15 February 1951.
- You are not authorized to expend or obligate, in furtherance of your performance hereunder, more than \$2,500,000.00 in the aggregate. Pending the execution of a definitive contract, each expenditure, order, subcontract or commitment made by you in furtherance of your performance hereunder, if for an amount that shall exceed. either five per centum of the amount last above stated or \$25,000.00, whichever is less, for tools, dies, jigs, fixtures, materials, supplies, parts, equipment, engineering assistance or reproduction or other license rights will be subject to written approval by the Contracting Officer. contract, regardless of the amount thereof shall be made by you with any other party for furnishing any of the completed or substantially completed articles, spare parts or work herein called for, without the written approvalof the Contracting Officer he to sources:

All the Articles of Section A (except Articles 2, 5, 8, 24, 29 and 30) and Articles B-2, and B-5 of Basic Agreement No. 1, AF 33 (038) 4005 are hereby incorporated herein by reference.

[†]Articles of Section A and Articles B-2, B-5, B-9, B-10 and B-13 of Basic Agreement No. 1, AF 33 (038)-4005 are hereby incorporated herein by reference.

- 6. Government Property and Partial Payments. (a) Title to all Government furnished property shall remain in the Government and shall be so identified while in possession of the Contractor, as directed by the Contracting Officer.
- (b) The necessary property records in connection with this order shall be maintained in accordance with AF Manual 69-6 "Industrial Property Accounting for Government Property Furnished Under Fixed-Price Contracts," dated 31 December 1948, as amended, and other applicable regulations. Government property records shall be maintained by an Industrial Accountable Property Officer designated for this order by the cognizant AF Representative.
 - (c) After your acceptance hereof, partial payments in accordance with regulations from time to time applicable, may be made to you upon your application to the Contracting Officer, Headquarters, Air Materiel Command.

7. Termination

- (a) In case a definitive contract is not executed by the date specified in paragraph 4 hereof (or any subsequent date at any time mutually agreed upon) because of the inability of the parties to agree upon a definitive contract, this order will terminate automatically on the stated date or such subsequent date, as the case may be, and a Notice of Termination, effective on the date of automatic termination, shall be delivered to you.
- be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to you of a Notice of termination specifying the extent to which performance of work under this order is terminated, and the date upon which such termination becomes effective.

(c) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, you shall (1) stop work under this order on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the work under this order as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of. work terminated by the Notice of Termination; (4) assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of your right, title, and interest under the orders or subcontracts so terminated; (5) with the approval or ratification of the Contracting Officer, which approval or ratification shall be final and conclusive for all the purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts; (6) transfer title (to the extent that title has not already been transferred) and, in the manner, to the extent and at the times directed by the Contracting Officer, deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (ii) the completed or partially completed plans, drawings, information and other property which, if this order had not been terminated, would be required to be furnished to the Government, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for the performance of this order; (7). use your best efforts to sell in the manner, at the times. to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in provision (6) of this paragraph, provided, however, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to you under this order or shall otherwise be credited to the price or cost of work covered by this order or paid in such other manner as the Contracting Officer may direct; (8, complete performance

of such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this order and in which the Government has or may acquire an interest.

- (d) After receipt of a Notice of Termination you shall submit to the Contracting Officer your termination claim. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon your request made in writing within such one year period or authorized extension thereof. Upon your failure to submit a termination claim within the time allowed, the Contracting Officer shall determine, on the basis of information available to him, the amount, if any, due to you by reason of the termination.
- (e) Subject to the provision of paragraph 7(d) hereof, you and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to you by reason of the total or partial termination of work pursuant to this clause. In the event of any termination pursuant to paragraph 7(a) hereof, such amount or amounts shall not include any allowance for profit. In the event of any termination pursuant to paragraph/7(b) hereof, such amount or amounts may include a reasonable allowance for profit, but only on work actually done in connection with the terminated portion of this order. Any such amount shall not exceed the amount set forth in paragraph 5 hereof. Any such agreement shall be embodied in an amendment to this order and you shall be paid the agreed amount. Such amendment shall be final and conclusive upon you and the Government.
- (f) If you and the Contracting Officer are not able to agree in whole or in part, as provided in paragraph 7(a) hereof, as to the amount or amounts to be paid to you in connection with the termination of work pursuant to this clause, the Government, but without duplication

of any amounts agreed upon in accordance with the abovecited paragraph 7(e), shall pay to you an amount determined as follows:

- (1) There shall be included therein all costs and expenses incurred by you in performance of the work under this order and not previously paid to you. Any determination of costs under this paragraph shall be governed by the statement of Contract Cost Principles set forth in the appropriate part of Section XV of the Armed Services Procurement Regulation as in effect on the date of this order.
- as not included under (1) above (which cost may include a reasonable allowance for profit to the subcontractor or vendors, but only on work done in connection with the terminated portion of any subcontract or order), of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph 7(c)(5) hereof, which are properly chargeable to the terminated portion of this order, provided that:
- (i) Each such claim has been settled with the written approval or ratification of the Contracting Officer; or
- (ii) If a final judgment has been rendered against you, your subcontractor or vendor by a court of competent jurisdiction determining liability with respect to any such claim, the Contracting Officer has determined that such judgment or a part thereof is allocable to the terminated portion of this order.

In order for a judgment to be allowable under this subparagraph (ii), you, your subcontractor or vendor concerned must have given the Contracting Officer prompt notice of the initiation of the proceedings in which such judgment was rendered and offered in writing to give the Government coniplete control of the defense of the proceedings, and must have diligently defended the suit or, if the Government has assumed control of the defense of the proceedings, must have rendered such reasonable assistance as has been requested by the Government. If such judgment includes amounts for loss of anticipatory prefits or consequential damages, such amounts will not be allowable under this subparagraph.

- (3) There shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of this order and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory; provided, however, that if the termination is pursuant to paragraph 7(a) hereof there/shall not be included any amounts for the preparation of your settlement proposal.
- (4) (i) In the event of the termination of this order for the convenience of the Government and not pursuant to paragraph 7(a) hereof, there shall be included therein such allowance for fee or profit with respect to work done by you prior to the effective date of the termination as the Contracting Officer may find reasonable under the circumstances.
- (ii) In the event of the termination of this order pursuant to paragraph 7(a) hereof, no allowance for fee or profit shall be included in the amount to be paid to you.

The total sum to be paid to you under this paragraph shall not exceed the amount set forth in paragraph 5 hereof, reduced by the amount of payments otherwise made. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts parable to you as provided in paragraph 7(f)(1) hereof, any amounts allocable to or payable in connection with property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph 7(c) hereof.

- (g) You shall have the right of appeal, under the clause entitled "Disputes," incorporated in this order by reference, from any determination of the amount due to you made by the Contracting Officer under paragraph 7(d) or 7(f) above (including any dispute as to whether termination has in fact taken place pursuant to paragraph 7(a) hereof), except that if you have failed to submit a claim within the time provided in paragraph 7(d) hereof and have failed to request extension of such time, you shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph 7(d) or 7(f) above, the Government shall pay to you the following; (i) if there is no right of appeal bereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal; any such determination being final and conclusive upon you and the Government.
- (h) In arriving at the amount due to you under this clause there shall be deducted (1) all unliquidated advance or other unliquidated payments theretofore made to you, (2) any claim which the Government may have against you in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired by you or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.
- (i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by you in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which you will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by you to the Government upon demand, together with interest computed at the rate of 6% per annum, for the period from the date such excess payment is received by you to the date on which such excess is repaid to the Government.

- (j) For a period of five years after final settlement under this order, you shall preserve and make available to the Government at all reasonable times at your office, but without expense to the Government, all books, records, documents, and other evidence bearing on the cost and expenses under this order and relating to the work terminated or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.
- 8. Any claim arising under this order may be assigned subject to the terms of the Assignment of Claims Act of 1940 unless the subject matter of this order has been classified as secret, confidential or restricted, and any claims arising under this order shall not be subject to reduction or set off for any indebtedness of the assignor to the United States arising independently of this order.
- 9. Your acceptance of this order will be indicated by affixing your signature to this letter and two copies thereof and returning the executed original and two executed copies to the Contracting Officer not later than 26 December 1950. Such acceptance will constitute this order a contract on the terms set forth herein.
- 10. Inspection.—The Contractor shall provide an acceptable and complete system covering the inspection of all materials, fabrication methods and finished parts. This system shall be approved by the Government representative who shall be assigned at the Contractor's plant.
- 11. In addition to the Articles referred to in paragraph 4 hereof, the definitive contract shall include such additional Articles of Section B of Basic Agreement No. 1, Art 33(038)-4005 as may be agreed upon between the parties hereto.
- 12. The provisions of the contract Article set forth in the following paragraph of the Armed Services Procurement Regulations are hereby incorporated into this Letter Contract by reference:

9-107.1 and 9-107.3 (Par. 9-3 less paragraph (j)).

200 Murray Exhibit No. 4-Wright Prime Contract

13. This Letter Contract has an overall security classification of Restricted. Details concerning the YJ65-W-1 Engines are classified as follows:

| Items of Information | Classification |
|--|----------------|
| Title or Subject | |
| Armstrong-Siddeley Sapphire | Î) |
| Expenditure Order—(Completed Forms) | R |
| Specific Performance | R |
| General Performance | R |
| Physical Characteristics Photographs and Films—External. Military Characteristics Photographs and Films—Internal Specifications Assembly and Installation Drawings. Publications—Operational, Maintenance Servicing and Training | R R |
| *Key: R—Restricted U—Unclassified | |

The United States of America

By Carl F. Schlub (Contracting Officer)

Accepted December 15, 1950

Wright Aeronautical Corporation
(Contractor)

Affix Corporate Seal

By T. B. Focke, Vice President (Name Official Title)

Note: Type or Print Names under all signatures

EXHIBIT "A" TO LETTER CONTRACT No. AF 33(038)-18132

- Item 1—Four Hundred Sixty-nine (469) YJ65-W-1 Engines constructed in accordance with Confractor's Specification No. 870 dated 27 October 1950 and such revisions to said Specification as may be negotiated between the parties hereto.
- Item 2—Six Hundred Nine (609) YJ65-W-1 Engines identical to the Engines called for under Item 1 above (Spares).

DELIVERY SCHEDULE

1951 1952
Items Sept Oct Nov Dec Jan Feb Mar Apr May Jun July Aug
1 and 2 5 10 20 35 50 70 95 125 160 200 250 128
combined

Amendment No. 1

Amendment No. 1, dated February 16, 1951. (This amendment increased the amount authorized to be expended under said prime contract by \$27,500,000.00. The full text of said amendment is omitted by agreement of the parties.)

RESTRICTED

Amendment No. 2

HEADQUARTERS AIR MATERIEL COMMAND

MCPPXE13:RWF/sq Wright-Patterson AF Base Dayton, Ohio

12 January 1951

Subject: Letter Contract AF 33(038)-18132 Amendment No. 2 to Subject Letter Contract.

To: Wright-Aeronautical Corporation Wood-Ridge, New Jersey

1. Subject Letter Contract, as amended, placed an order with you for supplies or services therein described:

It is now desired to amend Subject Letter Contract, as amended as follows:

- (b) It is anticipated that in the definitive contract to be executed Item 8 on Exhibit "A" attached hereto, covering "Special Tooling" shall be subject to a modified Form IV Price Redetermination Clause.
- (c) Partial Payments for the articles called for up to 75%, are hereby authorized in accordance with the terms of Exhibit "B" attached hereto.
- (d) It is contemplated that the Government, to the extent it is determined by the Contracting Officer to be necessary, will furnish to the Contractor under a separate facilities contract; machine tools and other equipment, or will provide funds for the acquisition and installation of such machine tools as are acquired by the Contractor and/or for use of its sub-

contractors, so as to reach a production rate of 500 YJ65-W-I engines per month.

- (g) It is anticipated that in the definitive contract to be executed, Item 9 of Exhibit "A" attached hereto, shall be subject to a modified Form IV Price Redetermination Clause, and in which it shall be provided that Contractor shall be reimbursed its costs without profit.
- 3. Except as hereby amended, all terms and conditions of the Letter Contract, as amended, shall remain unmodified and in full force and effect and shall also apply in carrying out the provisions of this Amendment No. 2.
- 4. If the foregoing is acceptable to you, kindly so indicate by signing the three (3) numbers of this Amendment and return same to the Contracting Officer forthwith, whereupon said Letter Contract, as amended, shall be deemed amended accordingly.
- 5. This instrument has been negotiated pursuant to Public Law 413, 80th Congress, Section 2(c)(1).

The United States of America By Carl F. Schlub Contracting Officer

Accepted January 15, 1951.

Wright-Aeronatical Corporation
Contractor

Pro T. P. Forks, Visc President

Affix Corporate Seal

By T. B. Focke, Vice President (Name; Official Title)

PR: 135275

Buyer: C. F. Schlub (MCPPXE5)

Code: 2-24

UNCLASSIFIED

Exhibit "B" to Letter Contract AF 33(038)-18132

Partial Payments.—Partial payments, which are hereby defined as payments prior to acceptance on work in progress for the Government under this contract, may be made upon the following terms and conditions.

- (a) The Contracting Officer may, from time to time, authorize partial payments to the Contractor upon property acquired or produced by it for the performance of this contract: Provided, that such partial payments shall not exceed 75 percent of the cost to the Contractor of the property upon which payment is made, which cost shall be determined from evidence submitted by the Contractor and which must be such as is satisfactory to the Contracting Officer: Provided further, that in no event shall the total of unliquidated partial payments (see (c) below) and of unliquidated advance payments, if any, made under this contract, exceed 80 percent of the total contract price of supplies still to be delivered.
- (b) Upon the making of any partial payment under this contract, title to all parts, materials, inventories, work in process and non-durable tools theretofore acquired or produced by the Contractor for the performance of this contract, and properly chargeable thereto under sound accounting practice, shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor for the performance of this contract and properly chargeable thereto as aforesaid shall vest in the Government forthwith upon said acquisition or production: Provided, that nothing herein shall deprive the Contractor of any further partial or final payments due or to become due hereunder; or relieve the Contractor or the Government of any of their respective rights or obligations under this contract.
- (c) In making payment for the supplies furnished hereunder, there shall be deducted from the contract price therefor a proportionate amount of the partial payments theretofore made to the Contractor, under the authority herein contained.

' (d) It is recognized that property (including, without limitation completed supplies, spare parts, drawings, information, partially completed supplies, work in process, materials, fabricated parts and other things called for herein) title to which is or may hereafter become vested in the Government pursuant to this Clause will from time to time be used by or put in the care, custody or possession of the Contractor in connection with the performance of this contract. The Contractor, either before or after receipt of notice of termination at the option of the Government, may acquire or dispose of property to which title is vested in the Government under this Clause, upon terms approved by the Contracting Officer, provided, that after receipt of notice of termination, any such property that is a part of termination inventory may be acquired or disposed of only in accordance with the provisions of the termination clause of this contract and applicable laws and regulations. The agreed price (in case of acquisition by the Contractor) or the proceeds received by the Contractor (in case of any other disposition), shall, to the extent that such price and proceeds do not exceed the unliquidated balance of partial payments hereunder, be paid or credited to the Government as the Contracting Officer shall direct; and such unliquidated balance shall be reduced accordingly. Current production scrap may be sold by the Contractor without approval of the Contracting. Officer but the proceeds will be applied as provided in this paragraph (d), provided that any such scrap which is a part of termination inventory may be sold only in accordance with the provisions of the termination clause of this contract and applicable laws and regulations, Upon liquidation of all partial payments hereunder or upon completion of deliveries called for by this contract, title to all property (or the proceeds thereof) which has not been delivered to and accepted by the Government under this contract or which has not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this Clause shall vest in the Contractor.

- (e) The provisions of this contract referring to "Liability for Government-furnished Property" and any other provision of this contract defining liability for Government-furnished property shall be inapplicable to property to which the Government shall have acquired title solely by virtue of the provisions of this Clause. The provisions of this Clause shall not relieve the Contractor from risk of loss or destruction of or damage to property to which title vests in the Government under the provisions hereof.
- (f) If this contract (as heretofore or hereafter supplemented or amended) contains provisions for Advance Payments, and in addition if at the time any partial payment is to be made to the Contractor under the provisions of this partial payments clause any unliquidated balance of advance payments is outstanding, then notwithstanding any other provision of the Advance Payments Clause of this contract the net amount, after appropriate deduction for liquidation of the advance payment of such partial payment shall be deposited in the special bank account or accounts maintained as required by the provisions of the Advance Payments Clause, and shall thereafter be withdrawn only pursuant to such provisions.

Amendment No. 3

Amendment No. 3, dated March 14, 1951. (This amendment extended the expiration date of said prime contract to June 1, 1951. The full text of said amendment is omitted by agreement of the parties.)

RESTRICTED

HEADQUARTERS AIR MATERIEL COMMAND

MCPPXE13/FEK/mfw/ms

Wright-Patterson AF Base Dayton, Ohio

Amendment No. 4

Subject: Letter Contract No.

AF 33(038)-18132

To: Wright Aeronautical Corporation Wood-Ridge, New Jersey

- 1. Subject Letter Contract placed an order with you for the supplies therein described.
- 2. It is now desired to amend subject Letter Contract as follows:
 - (a) By extending the date of expiration, set forth in paragraph 4 thereof, to 1 July 1951.
 - (b) By increasing the amount authorized to be expended or obligated, as set forth in paragraph 5 thereof, by \$17,670,000.00.
 - (e) By deleting paragraph 2(d) of Amendment No. 2 as revised by Amendment No. 3 thereto in its entirety and inserting in lieu thereof the following:
 - "2(d)" It is contempleted that the Government
 (i) will furnish to the Contractor and/or its subcontractors under separate facilities contracts
 such machine tools and equipment or will provide
 funds for the acquisition and installation of such
 machine tools and equipment for use on a nocharge for use basis, and/or (ii) will furnish to

Contractor's subcontractors under separate agreements on a substantial basis of one per cent (1%) per month such machine tools and equipment as are required to enable the Contractor and its subcontractors to reach a production rate of 800 YJ65-W-1 engines per month together with such spare parts as may be required by the Government."

- (f) Exhibit "B" attached to Amendment No. 2 thereto is hereby amended by adding thereto the following paragraph:
 - '(g) For the purpose of this clause, the term 'property acquired or produced by it' shall include property to which the Contractor takes title by reason of making partial payments to a subcontractor; provided, the subcontract under which such partial payments are made and the partial payments clause have been approved by the Contracting Officer and; provided further, such partial payments clause is not less favorable to the Government than this clause."
- 3. Except as hereby amended, all terms and conditions of the Letter Contract, as amended, shall remain unmodified and in full force and effect and shall also apply in carrying out the provisions of this Amendment No. 4.
- 4. If the foregoing is acceptable to you, kindly so indicate by signing the three (3) numbers of this Amendment and return same to the Contracting Officer forthwith, whereupon said Letter Contract, as amended, shall be deemed amended accordingly.

5. This instrument has been negotiated pursuant to Section 2(a)(1) of Public Law 413, 80th Congress.

The United States of America
By Carl F. Schlub
Contracting Officer

Affix Corporate Seal

Accepted May 18, 1951

Wright Aeronautical Corporation
Contractor
Pro T. P. Focks, Vice President

By T. B. Focke, Vice President (Name—Official "itle)

The supplies and services to be obtained by this instrument are authorized by, are for the purpose set forth in, and are chargeable to allotments below enumerated, the available balance of which is sufficient to cover the cost thereof:

Debit: 97-1110045.000 163-5000 P 903(1)-09 S33-038

Authorization:

R&R dtd 28 Apr 51 fm MCFDXE5

Buyer: Lt. W. E. Johnson (MCPPXE5)

PR: 135275 Class: 02A Admin: Eastern APD

Amendment No. 5, is omitted by agreement of the parties.

Amendment No. 6

Amendment No. 6, dated June 19, 1951. (This amendment extended the expiration date of said prime contract to August 1, 1951. The full text of said amendment is omitted by agreement of the parties.)

Amendment No. 7

Amendment No. 7 is omitted by agreement of the parties.

Amendment No. 8

Amendment No. 8, dated August 9, 1951. (This amendment extended the expiration date of said prime contract to September 1, 1951. The full text of said amendment is omitted by agreement of the parties.)

Amendment No. 9

Amendment No. 9, dated September 12, 1951. (This amendment, among other things, extended the expiration date of said prime contract to November 1, 1951. The full text of said amendment is omitted by agreement of the parties.)

Amendment No. 10, dated October 31, 1951. (By this amendment the Government recognized and consented to the assignment of rights conferred and the duties imposed by said prime contract on Wright Aeronautical Corporation, to Curtiss-Wright Corporation, and Curtiss-Wright Corporation became the Contractor under said prime contract. The full text of said amendment is omitted by agreement of the parties.)

Amendment No. 11

Amendment No. 11, dated November 9, 1951. (This amendment, among other things, extended the date by which it was expected a definitive contract would be placed with Curtiss-Wright to January 1, 1952. The full text of said amendment is omitted by agreement of the parties.)

HEADQUARTERS AIR MATERIEL COMMAND

MCPPAE55/WEJ/mjo-

Wright-Patterson AF Base Dayton, Ohio

21 December 1951

Subject: Letter Cortract AF 33(038)-18132

To: Curtiss-Wright Corporation
Wright Aeronautical Division
Wood-Ridge, New Jersey

Amendment No. 12 to Subject Letter Contract

- 1. Subject Letter Contract, as amended, placed an order with you for the supplies therein described.
- 2. It is now desired to amend subject Letter Contract as follows:
 - (a) By extending the anticipated date of conversion of subject Letter Contract to 1 February 1952.
 - (b) By making the provisions of the Partial Payments Clause attached hereto applicable thereto.
- 3. If the foregoing is acceptable to you, kindly so indicate by signing three (3) numbers of this Amendment and return same to the Contracting Officer forthwith, whereupon said Letter Contract, as amended, shall be deemed amended accordingly.

4. This instrument has been negetiated pursuant to Section 2(c)(1) of Public Law 413, 80th Congress.

The United States of America By Carl F. Schlub Contracting Officer

Affix Corporate Seal

Accepted December 28, 1951

Curtiss-Wright Corporation Wright Aeronautical Division Contractor

By: T. B. Focke, Vice President (Name—Official Title)

Buyer: W. E. Johnson, Capt (USAF) MCPPAE54 Class: 02A and 02D

Partial Payments—Partial payments, which are hereby defined as payments prior to acceptance on work in progress for the Government under this contract, may be made upon the following terms and conditions.

- (a) The Contracting Officer may, from time to time, authorize partial payments to the Contractor upon property acquired or produced by it for the performance of this contract: Provided, that such partial payments shall not exceed * percent of the cost to the Contractor of the Property upon which payment is made, which cost shall be determined from evidence submitted by the Contractor and which must be such as is satisfactory to the Contracting Officer: Provided further, that in no event shall the total of unliquidated partial payments (see, (c) below) and of unliquidated advance payments, if any, made under this contract exceed 80 percent of the total amount authorized to be expended under paragraph 5 of this Letter Contract.
- (b) Upon the making of any partial payment under this contract, title to all parts, materials, inventories, work in process and non-durable tools theretofore ac-

quired or produced by the Contractor for the performance of this contract, and properly chargeable thereto under sound accounting practice shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor for the performance of this contract and properly chargeable thereto as aforesaid shall vest in the Government forthwith upon said acquisition or production; Provided, that nothing herein shall deprive the Contractor of any further partial or final payments due or to become due hereunder; or relieve the Contractor or the Government of any of their respective rights or obligations under this contract.

- (c) In making payment for the supplies furnished hereunder, there shall be deducted from the contract price therefor a proportionate amount of the partial payments theretofore made to the Contractor, under the authority herein contained.
- . (d). It is recognized that property (including, without limitation completed supplies, spare parts, drawings, information, partially completed supplies, work in process, materials, fabricated parts and other things called for herein) title to which is or may hereafter become vested in the Government pursuant to this Clause will from time to time be used by or put in the care, custody or possession of the Contractor in connection with the performance of this The Contractor, either before or after receipt of notice of termination at the option of the Government, may acquire or dispose of property to which title is vested in the Government under this Clause, upon terms approved by the Contracting Officer, provided, that after receipt of motice of termination, any such property that is a part of termination inventory may be acquired or disposed of only in accordance with the provisions of the termination clause of this contract and applicable laws and regulations. The agreed price (in case of acquisition by the Contractor) or the proceeds received by the Contractor (in case of any other disposition), shall, to the extent that such price and proceeds do not exceed the unliquidated balance of partial payments hereunder, be paid or credited to the Government as the Contracting Officer

shall direct; and such unliquidated balance shall be reduced accordingly. Current production scrap may 's sold by the Contractor without approval of the Contracting Officer provided that any such scrap which is a part of termination inventory may be sold only in accordance with the provisions of the termination clause of this contract and applicable laws and regulations. Upon liquidation of all partial payments hereunder or upon completion of deliveries called for by this contract, title to all property (or the proceeds thereof) which has not been delivered to and accepted by the Government under this contract or which has not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this Clause shall vest in the Contractor.

- (e) The provisions of this contract referring to "Liability for Government-furnished Property" and any other provision of this contract defining liability for Government-furnished property shall be inapplicable to property to which the Government shall have acquired title solely by virtue of the provisions of this Clause shall not relieve the Contractor from risk of loss or destruction of or damage to property to which title vests in the Government under the provisions hereof.
- (f) If this contract (as heretofore or hereafter supplemented or amended) contains provisions for Advance Payments and in addition if at the time any partial payment is to be made to the Contractor under the provisions of this partial payments clause any unliquidated balance of advance payments is outstanding, then notwithstanding any other provisions of the Advance Payments Clause of this contract the net amount, after appropriate deduction for liquidation of the advance payment of such partial payment shall de deposited in the special bank account or accounts maintained as required by the provisions of the Advance Payments Clause, and shall thereafter be withdrawn only pursuant to such provisions.

MURRAY EXHIBIT 5A

Original Subcontract between Wright and Murray dated April 19, 1951 entered into under Prime Contract No. AF 33(038)-18132.

THE MURRAY CORPORATION OF AMERICA

7700 Russell Street Detroit 11, Michigan

April 19, 1951

Wright Aeronautical Corporation Wood-Ridge, New Jersey

Subject: Sheet Metal Assemblies-Sapphire Jet Engine.

Gentlemen:

We will be pleased to enter into a subcontract with you under your contract AF 33(038)-18132 with the United States Government pursuant to which subcontract we would manufacture and sell to you the following subassemblies, which may be shipped as separate items:

605029 Exhaust Cone Assembly

605099 Housing Inlet.

605038 Scoop

605070 Burner Tube

605067 · Shield

605040 Outer Housing

605045 Inner Liner.

605128 Burner Support

· 605086 Outer Liner

605073 Duct Assembly

605095 Rear Main Bearing Support

in quantities, at prices, and upon terms and conditions to be agreed upon between us in a definitive subcontract and subject to the following conditions: 1. The definitive subcontract will require an ultimate production rate of 400 to 600 units per month by September 1952 and that you will order and we will accept orders for at least 3000 units in accordance with the following schedule:

5—July 1951 5—August 1951 10—September 1951 35—October 1951 60—November 1951 75—December 1951 95—January 1952 125—February 1952 500—October 1952

deliveries to be subject to excusable delays to be provided in said subcontract. "Unit" as herein used shall consist of such of the above listed subassemblies required for a complete Sapphire jet engine.

The purchase orders to be issued pursuant to such definitive subcontract shall provide for the following prices for a complete unit: for the first 5 hand fabricated units, \$24,000, each; for the next 15 units, if fabricated by hand, \$20,000, each; the next 300 units, \$3,500, each; the next 2,700 units, \$3,725, each; and the remaining units, \$3,400, each. The prices of the first 320 units shall/be subject to redetermination after completion of the lots of 5, 15, and 300 units respectively, and subject to limitations in this paragraph #2 specified, such price redetermination shall be based upon costs subject to verification and audit by Wright and the Air Force and shall have retroactive effect for each lot considered separately. Thereafter, prices may be redetermined at the request of either party but not oftener than at ninety day intervals. Except for the price redetermination of the lots for the aggregate of 320 units, redetermined prices shall operate prospectively only and shall be effective thirty days after the date of request for the applicable price redetermination, it being understood that requests may be made sixty days after the effective date of the last price redetermination. Each request for price redetermination sliall set forth the estimated elements of cost upon which such request is based. For the purpose of redetermining prices, we agree to submit all such cost data as you may reasonably request and in addition you shall have the right to make such audits of our books and records pertaining to the cost of performing the subcontract as you deem necessary; provided, however, that we shall not be required to furnish, nor shall you have the right to audit, any of the details with respect to the general and administrative expenses entering into such costs. As to such general and administrative expenses, we will either:

- (a) Furnish you with a certificate of the independent certified public accountant whom we employ to make our annual audit to the effect that the amount and allocation to the subcontract of such expenses are proper and in accordance with sound accounting principles; or
- (h) Agree with you upon a fixed rate for general and administrative expenses which shall not be subject to price redetermination,

as you may elect. All price redeterminations may be upwards or downwards.

3. The definitive subcontract shall provide that we shall fabricate or otherwise acquire such special tooling as requested by us as being necessary to perform the subcontract and as may from time to time be approved by you, and you shall pay us promptly therefor from time to time as invoiced by us for the costs thereof it being understood that on such tooling fabricated by us the following selling rates are applicable:

Design \$ 5.00 per hour Construction \$ 5.80 per hour Tryout \$ 5.10 per hour

plus such cost increases that we may incur over these rates. These additional costs would be reflected by an increase in the labor and burden components of our oper-

ating rates. Revisions would be made in our normal manner of rate computations. Our cost data in respect to materials for and hours worked in fabricating such special tools will be furnished to you as you may reasonably request subject to the same limitations (but not price redeterminations) as set forth in Paragraph #2 hereof.

The payments to be made by you for such special tooling and for other items herein specified shall be in addition to the unit prices provided in paragraph #2 hereof. We agree that upon payment for any special tooling, title thereto shall yest in the Government.

- 4. Such definitive subcontract shall provide that, all without cost to us, you will furnish to us such machinery and equipment requested by us to perform the subcontract and that you will bear the cost of the necessary installation of such machinery and equipment as well as our plant rearrangement, all as first approved by you and the Department of the Air Force. We shall furnish lists and descriptions of required machine tools and equipment and make such arrangements as are necessary for placing orders for and expediting delivery of such machine tools and equipment, it being understood that we shall not be required to commit ourselves for any payment or obliga-. tion therefor. If authorized by you under contract AF 33(038)-16864 we may acquire for your account any , such machinery and equipment. Any delay on your part hereunder shall extend the time for end product delivery and performance of such subcontract.
 - 5. It is understood that your contract with the Government will be amended forthwith so that there may be included in the subcontract, and accordingly the subcontract will provide for, partial payments of 75% of cost in substantially the same manner as provided in ASPR 5-407.2 (1). We agree to furnish to you such information and to allow you to conduct such audits as may be required by the Government under the provisions of said Article in respect of requests for partial payments. You agree subject to the provisions of such Article to make partial payments to us. It is further understood that as soon as

your contract is so amended, requests for partial payments may be made by us in respect of costs incurred by us hereunder.

- 6. The form of definitive subcontract between us shall be negotiated and executed as soon as possible and in any event on or before July 1, 1951, unless such time is extended by mutual agreement.
- 7. It is further understood that we may request the Government to include in the definitive subcontract between us a provision to the effect that in the event of termination thereof, settlement may be made direct with the Government.
- 8. Pending the execution of a definitive subcontract, we are authorized by you, subject to the approvals required in paragraphs 3 and 4 above, to proceed at once to prepare for the manufacture of the above units and do all preliminary work in connection therewith, including, but not limited to, process, design and construction work, issuance of commitments for hand tooling and hand sample parts and plant rearrangement, provided that the amount expended by us, or committed for shall not, without your prior written approval, exceed the sum of \$2,000,000.

All costs incurred by us in anticipation of the subcontract including the above rates for special tooling fabrication as specified in paragraph 3 shall be considered as costs incurred by us hereunder, in so far as such costs are proper costs under applicable governmental regulations, and you shall pay us therefor promptly from time to time as invoiced by us, partial payments to be made prior to completion of any item on the basis set forth in paragraph #5 hereof, the remaining balance of cost for any item to be paid by you upon completion. This agreement and any superseding definitive subcontract shall be subject to termination by you apon termination in whole or in part of your prime contract with the Government, and in such event you will reimburse us for all costs incurred by us hereunder and under such definitive subcontract, together with reasonable compensation for all

work performed by us, calculated in a manner similar to the manner of calculating compensation to you under your contract with the Government, provided that such costs and compensation under this letter of agreement shall not exceed the sum of \$2,000,000, or such greater amount as is approved by you as is herein provided.

If the foregoing is acceptable to you, kindly so indicate by signing a copy of this letter and return same to us forthwith, whereupon this letter shall be deemed to constitute a letter of agreement between us, superseding your letter to us dated April 5, 1951.

Very truly yours,

The Murray Corporation of America By B. C. Gould, President

Accepted:

Wight Aeronautical Corporation By T. B. Focke, Vice President

Priority Rating DO-01 for.....Pcs. Certified under NPA Regulation 2. This rating may be extended to subcontractors and suppliers pursuant to NPA Reg. 2, with appropriate notation of rating No. and contract No. on each purchase order. Authorized signature below.

With the exception of provisions relating to (a) General and Administrative Expenses in Par. 2 and (b) the increases in the labor and burden components of operating rates in Par. 3, the above letter agreement under contract AF 33(038)-18132 is approved under the provisions of such prime contract, but this approval shall not relieve the prime contractor of any obligation or responsibility which it may have under the prime contract, shall be without prejudice to any right or claim of the Government thereunder or under this letter agreement, and shall not create any obligation of the Government to the vendor under this letter agreement.

Samuel M. Jacoby, Contracting Officer.

MURRAY EXHIBIT 5B

Amendment to Original Subcontract dated May 24, 1951, between Wright and Murray.

WRIGHT AERONAUTICAL CORPORATION

A Division of Curtiss-Wright Corporation Wood-Ridge, New Jersey U. S. A.

May 24, 1951

The Murray Corporation of America 7700 Russell Street Detroit 14, Michigan

Subject: Sheet Metal Assemblies—

Tail Cone and Combustion Chamber

Dear Sirs: ..

Pending our entering into a definitive subcontract, it is desired to clarify certain provisions of our letter agreement dated April 19, 1951. If the following terms are acceptable to you, will you kindly so indicate by signing a copy of this letter and return same to us, whereupon this supplemental agreement shall be deemed an amendment to the said letter of agreement between us.

- 1. With respect to the provisions in paragraph 2. of the letter agreement, relating to the determination of general and administrative expenses, it is understood that representatives of the Government do have and may exercise the right of audit in order to ascertain the proper general and administrative rate and the correct allocation to the subcontract.
- With respect to the provisions in paragraph 3, relating to additional costs above the selling rates designated therein, delete the following:

"plus such cost increases that we may incur over these rates. These additional costs would be reflected by an increase in the labor and burden components of our operating rates. Revisions would be made in our normal manner of rate computations."

Substitute in lieu thereof the following:

"Where increases or decreases in payroll rates or in cost of fringe benefits for employees occur, an increase or decrease in such selling rates shall be made to reflect such changes from the effective date thereof."

Very truly yours,

Wright Aeronautical Corporation By T. B. Focke, Vice President

Accepted:

The Murray Corporation of America By B. C. Gould, President

The above amendment to the letter agreement is approved under the provisions of contract AF 33(038)-18132 without relieving the prime contractor of any of its obligations under the prime contract.

Samuel M. Jacoby, Contracting Officer.

MURRAY EXHIBIT No. 6

Procurement and Contracting Office Instructions issued by Headquarters Air Materiel Command, Wright-Patterson Air Force Base, Dayton, Ohio, relating to processing of invoices for partial payments with Form DOI 70-83 dated 16 June 1951.

HEADQUARTERS AIR MATERIEL COMMAND

Wright-Patterson Air Force Base Dayton, Ohio

MCPOXC/JRJ/McG:

16 Jun 1951

Directorate Office Instruction No. 70-83 (Procurement and Industrial Planning)

Subject: Procurement and Contracting
Processing of Invoices for Partial Payments
Under Fixed-Price Contracts
(This DOI supersedes DOI 70-83, 23 Dec. 49)

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1. Purpose. The purpose of this DOI is to establish procedures relating to the processing of contractors' invoices for partial payments under fixed-price contracts.

2. Scope.

- a. The provisions of this DOI are applicable to all personnel of AMC concerned with the administration of contracts placed by the Directorate, Procurement and Industrial Planning, Hq. AMC, and those contracting officers of special procurement activities of the Air Research and Development Command which have been authorized to accomplish contracting functions beyond the scope of local purchase.
 - b. This DOI is applicable only to fixed-price contracts containing contractual provisions for partial payment.
- 3. Definition. The term "partial payment" as used herein, means the payments as defined in the contract articles; i.e., "Payments prior to delivery on work in progress for the Government," or as otherwise defined in the contract.

4. General:

- a. It is the intent of the partial payment provision of a contract to enable the contractor to obtain a portion of the contract price prior to delivery upon property acquired or produced by the contractor for performance of the contract, or as otherwise provided by the contract. To accomplish this, administrative contracting officers will exert every effort to insure prompt payment to the contractor, making such checks as are necessary without delay, and processing the invoices for partial payment as quickly as possible.
- b. It may be impractical in some cases to ascertain with mathematical exactness the portion of the costs incurred by the contractor which are appli-

cable to the partial payment requests. However, the problem is essentially no different from any other problem of allocation of contractors' costs among various items which the contractor is producing on different contracts. The administrative contracting officer should follow established accounting procedures in recognizing such costs for payment.

- e. Air Force contracts generally provide that the partial payments may be authorized by the administrative contracting officer either in amounts not exceeding 75% of the cost to the contractor of the property on which payment is requested, or in amounts not exceeding 90% of the direct labor and direct material costs to the contractor of the property to which the partial payment relates. Other contracts may have different partial payment provisions.
- d. When contracts authorizing partial payments by contractual provision contain either a total price redetermination article, or an incentive clause, the target price will be considered as the contract price for the purpose of partial payment administration.
- e. Subcontracts authorizing partial payments by contractual provision will be considered for the purposes of arriving at the amount of partial payments to be made under the prime contract. The amount of payment for which a prime contractor will be reimbursed when making a partial payment to a subcontractor, will be the same percentage as any other partial payment item; i.e., if the prime contract provides for a 75% partial payment, the amount for which the administrative contracting officer will authorize for reimbursement to the prime contractor, will be 75% of the amount the prime contractor paid to the subcontractor.

5. Procedure:

- a. When a contract containing a partial payment article is received by an air procurement district and the contractor has not previously had contracts containing a partial payment article, the administrative contracting officer will write to the contractor to inform him that if it is his intent to submit partial payment invoices, he should segregate and accumulate the costs applicable to the contract.
- b. In approving partial payment requests, the administrative contracting officer may accept incurred costs as a basis for payment for the direct material charges, provided that the contractor submits a certification that the unencumbered title to the material for which reimbursement is requested is vested in the contractor; and that, upon payment, title will be vested in the Government in accordance with the partial payment article in the contract. While an audit is not required in. each instance by this directive, prior to the approval of the first partial payment to a new contractor where there has been no previous audit experience, the administrative contracting officer should request an audit of the first partial payment invoice submitted by the contractor if he deems it necessary.
- c. Thereafter, he will satisfy himself that the contractor's statement of costs is just and reasonable, consulting the available appropriate Air Force technical personnel, and making such other checks as are deemed necessary to determine if the contractor's statement of costs incurred is in agreement with the records of the contractor and applicable to the contract. The administrative contracting officer, may in lieu of the above, accept the certification of the contractor as set forth in Exhibits "A" and "B". In the latter instance, where unusually large payments are involved, or other unusual.

circumstances are present, the administrative contracting officer should, from time to time, request a post-audit of the contractor's accounts. Any adjustments which are necessary as the result of such an audit will be considered in approving the next partial payment request.

- d. Unless the contract article specifically provides otherwise, the administrative contracting officer will not approve partial payments to the contractor based on costs attributable to any item completed and delivered to the Government under the contract involved.
- 6. Statements of Expenditures in Support of Partial Payment Invoices Submitted by the Contractor.
 - a. As part of the contractor's partial payment invoice, the contractor will be required to include, as evidence, a statement of cumulative costs incurred from the inception of the contract, up to and including the period (usually one month) covered by the invoice.
 - b. This statement of costs incurred will be secured from the contractor to support partial payment requests not in excess of 75% or any other percentage indicated in the contract, on the basis of the cost to the contractor of the property acquired and will be substantially in the form shown as Exhibit "A". The data furnished by the contractor should contain his name and address, contract number, the dollar amount of the contract, date, partial payment request number, and the period of cumulated cost of the work under the contract. Exhibit "A" is explained as follows. (The numbering below corresponds with that used in Exhibit "A"):
 - 1. Direct Material. The cost of direct material includes the costs of all items purchased or supplied which enter directly into the end

product or which are used or consumed directly in connection with the fabrication of the articles called for under the contract.

- 2. Direct Labor. The direct labor costs consist of salaries and wages properly chargeable directly to the performance of the contract.
- 3. Manufacturing and Production Expenses.

 Costs which are the indirect costs incurred in the operation of production departments.
- 4. 5 and 6. Other Direct Costs. There are null merous items of cost which are generally classified as indirect costs, but which may in particular cases, properly be chargeable directly to the contract, where the contractor demonstrates that such costs are specifically related to the contract.
- 7. Self-Explanatory.
- 8. General and Administrative Expenses. These are costs incurred in the general management, supervision and conduct of the business as a whole.
- 9. Self-Explanatory.
- 10. Cost or Negotiated Unit Cost of Items Delivered. The cost should be one of the following alternatives, stated in order of preference:

 (1) The actual cost of items delivered, giving proper consideration to the deferment of the starting load costs; (2) Average projected unit costs based on experienced costs to date, plus estimated cost to complete the item, in those instances where the contractor maintains cost data which will clearly establish the reliability of its estimates; (3) Negotiated unit cost of items delivered representing the contract price less negotiated profit allowance: (4) If the contractor is unable to establish the cost of the items delivered by one of the above meth-

ods, the unit price of the article delivered to the Government under the contract may be considered the cost of the property incorporated therein.

- 11 through 15, Self-Explanatory.
- 16. Unrecouped Partial Payments. This information may be obtained from an examination of the contractor's invoice paid by the accounting and disbursing officer which indicates the amount of the recoupment as applied against previous partial payments.

17 through 24. Self-Explanatory.

- c: A cumulative statement of cost incurred will be submitted by the contractor to support partial payment requests not in excess of 90% of the direct material and direct labor costs of the property upon which payment is made. This statement will be substantially in the form shown as Exhibit "B". The data furnished by the contractor should contain his name and address, contract number, the dollar amount of the contract, date; partial payment request number, and the period of cumulated costs incurred for the work under the contract. Exhibit "B" is explained as follows. (The numbering below corresponds with that used in Exhibit "B"):
 - 1. Direct Material. See paragraph 6b, 1.
 - 2. Direct Labor. See paragraph 6b, 2.
 - 3. Self-Explanatory.
 - 4. Direct Material and Direct Labor Costs of Items Delivered. The costs applicable are the alternatives listed in par 6b, 10, except that the data should be limited to the cost of labor and material. The negotiated cost, if used, should be readily determinable from the accepted bid data.

- 5 through 8. Self-Explanatory.
- 9. Partial Payment Recoupments to Date. This information may be obtained from an examination of the contractor's invoice paid by the accounting and disbursing officer, and which indicates the amount of the recoupment as applied against previous partial payments.
- 10 through 18. Self-Explanatory.
- 7. Certification by the Administrative Contracting Officer.
 - a. Upon being satisfied that said statement of cost is in agreement with contractor's records, the administrative contracting officer will certify and approve the invoices for partial payment. If the air procurement district makes use of Standard Form 1034, "Public Voucher for Purchases and Services other than Personal," and supports the voucher with the contractor's invoice and eyidence, the certification as shown on the voucher will be executed by the administrative contracting officer. If the contractor's invoice is forwarded to the accounting and disbursing officer, without the use of Form 1034, the administrative contracting officer will place and execute the following certification on the contractor's invoice:

"Under the provisions of the contract, I hereby authorize and approve a partial payment in the amount of \$.....

| Signature | | **** |
|-----------|------|----------|
| Title | | |

b. The administrative contracting officer will insert the amount of the partial payment authorized in the space provided for in the above certification and forward the approved invoice or voucher to the accounting and disbursing officer charged with making payment under the contract.

8: Rescission. Action has been initiated to rescind AMCR 70-20, 25 Nov. 44, in the next published index.

/s/ Orval R. Cook

/t/ ORVAL R. COOK
Major General, USAF
Director Procurement and
Industrial Planning

2 Incls:

1. Exhibit A

2. Exhibit B

DISTRIBUTION "A"

EXHIBIT A

SCHEDULE SUPPORTING PARTIAL PAYMENT INVOICE TOTAL COST BASIS

| Contractor's Name | |
|--|------------|
| Address | |
| D-4 | |
| Contract No | |
| Amount of contractP.P. Invoice No | |
| Statement of total costs incurred from to (C | lests must |
| be cumulative to date.) | |
| .1. Direct Material \$ | |
| 2 Direct Labor | |
| 3. Manufacturing & Production Expense | |
| (Specify Rate%) | |
| 4. Other Direct Costs (If any specify) | |
| 5, ******************************* | |
| 6 | |
| 1. 10tal | |
| *8. General & Administrative Expenses | \$ |
| (Specify Rate%) | |
| 10. Cost or Negotiated Unit Cost of Items De- | |
| livered | |
| 11. Costs Subject to Partial Payment (9 less | |
| . 10) | |
| **12. 25% of Item 11 | |
| 13. Total Eligible for Partial Payment (11 | |
| less 12) | |
| 14. Total Amount of Partial Payments to Date | |
| 15. Recoupments to Date | |
| 16. Unrecouped Partial Payments (14 less 15) | |
| 17. Balance (13 less 16) | |
| 18. Amount in Line 13 Above | |
| 19. Total Contract 3 | |
| 20. Contract Price of Items De- | |
| livered | |
| 21. Contract Price to be Delivered (19 less 20) | |
| **22. 80% of Line 21 | |
| 23. Positive Balance, if any (18 less 22) | |
| 24. Amount of this Invoice (17 less 23) | |
| | |
| *Show rate used in computing this amount and period use | d in deter |
| mining this rate. | |
| **Insert whatever percentage figure is provided by the parti | al paymen |
| provision of the contract. | |

| and correct that paym it has bee | fy that the above statement of ct to the best of my knowledge ent therefor has not been received in prepared from the books of f | e and belief ed, and that account and |
|--|--|---|
| | (Insert Name of Contractor) | |
| | | |
| | Signature | |
| | | |
| | Title | |
| | | |

Incl 1 to DOI 70-83, 16 Jun 51

SCHEDULE B

SCHEDULE SUPPORTING PARTIAL PAYMENT INVOICE TIME AND MATERIAL BASIS

| Contractor's Name | | |
|---|------------|---|
| Address | | |
| Contract No | | |
| D.D. I | · No | |
| Contract Amount | e No | |
| Statement of total costs incurred from to | | (Costs must |
| be cumulative to date.) | | |
| 1. Direct Material | 2 | |
| 1. Direct Material 2. Direct Labor | 6 | |
| 3. Total (1 plus 2) | | \$ |
| 4. Direct Material & Labor Costs of Items | | |
| Delivered | . * | ****** |
| 5. Costs Subject to Partial Payment (3 less | | |
| 4) | | |
| *6. 10% of Line 5 | | |
| . 7. Total Eligible for Partial Payment (5 less | | |
| 6.) | | |
| 8. Total Amount of Partial Payment to Date | | |
| 9. Recoupments to Date | | * |
| 10. Unrecouped Partial Payments (8 less 9) | | |
| 11. Balance (7 less 10, | | |
| 12. Amount from Line 7 Above | | |
| 13. Total Contract Price \$ | | |
| livered | | |
| 15. Contract Price of Items De- | | |
| . livered (13 less 14) | | |
| *16, 80% of Line 15 | ***** | |
| 17. Positive Balance, if any (12 less 16) | | |
| 18. Amount of this Invoice (11 less 17) | * | |
| "Insert whatever percentage figure is provided | by the par | tial payment |

provision of the contract.

| "I certify | that the above statement of costs is just | 1 |
|-------------|--|---|
| and correct | to the best of my knowledge and belief | |
| that paymer | it therefor has not been received, and tha | t |
| it has been | prepared from the books of account and | 1 |
| records of | | , |

(Insert Name c'Contractor)

Signature....

Title ...

Incl 2 to DOI 70-83, 16 Jun 51

MURRAY EXHIBIT No. 7.

Photostatic Copies of Partial Payment Requests, from Murray to Kaiser bearing approval of Air Force Contracting Officer

Purchase Order KFW-49000

Partial Payment Invoice Number 02-21-1

THE MURRAY CORPORATION OF AMERICA

7700 Russell Street. Detroit 11, Michigan

August 10, 1951

To: Kaiser Frazer Corporation-Willow Run, Michigan.

A partial payment of \$23,203.13 is requested on Contract AF 33-(038)-18481 with expense detailed on Exhibit attached, as support of the costs incurred.

I hereby certify that the above bill is correct and just, that payment therefor has not been received, and that the bill is presented with the knowledge that the amount paid hereunder will become the basis for a claim against the United States Government.

Company The Murray Corporation of America Signature /s/ N. Lanary Title Chief Accountant

EXHIBIT A

SCHEDULE SUPPORTING PARTIAL PAYMENT INVOICE TOTAL COST BASIS

Contractor's Name The Murray Corporation of America

Address 7700 Russell Street, Detroit 11, Michigan

Contract No. AF33-(038)-18481 Amount of Contract \$11,000,000.00 Date August 10, 1951 P. P. Invoice 02-21-1

STATEMENT OF PARTIAL COSTS INCURRED FROM FEB. 1, 1951 TO MAY 31, 1951

| | 1 Direct Material \$ | 3,421.12 | |
|----|--|------------------------|--------------|
| | 2. Direct Labor : | 22,360.14 | |
| | 3. Manufacturing & Produc- | | |
| | tion Expense | | |
| | (Specify rate%) | | |
| | 4. Other Direct Cost (if any Burden on the | | |
| | specify) above costs will | | |
| | 5 be included in a | · · /. | |
| | M | | |
| | | 1.00 | |
| | 1. 1000 | | |
| | 8. General & Administrative | à. | |
| | Expenses | | |
| | (Specify rate%) | | |
| | r. | | |
| - | 9. Total Costs (7 plus 8) | | \$25,781.26. |
| 50 | 10. Cost or Negotiated Unit Cost of Items | | |
| | Delivered | | -0- |
| | | | - |
| • | 11. Costs Subject to Partial Payment (9 less | | |
| | 10) | | 25,781.26 |
| | 12. 10% of Item 11 | | 2,578.13 |
| | 12. 10 % of Rem 11 | | |
| | 12 Total Fligible for Partial Payment '(11 | | |
| | 13. Total Eligible for Partial Payment (11 | | \$23,203.13 |
| | less 12) | 0 | |
| | | . 0 | |
| | 15. Recoupments to Date | | |
| | | | |
| | 16. Unrecouped Partial Payments (14 less | - 5 | 0 |
| | 15) | | |
| | | | |
| | 17. Balance (13 less 16): | | \$23,203.13 |
| | 18. Amount in Line 13 above \$ | 23,203.13 | *- |
| | 19. Total Contract \$11,000,000.00 | | |
| | 20. Contract Price of Items | | |
| | Delivered | | |
| | A CONTRACT C | | * |
| | 21. Contract Price to Be De- | | |
| | Hvered (19 less 20) \$11,000,000.00 | | |
| | | 9,900,000.00 | |
| | | Perint and the Control | _0_ |
| | 23. Positive Balance, if any (18 less 22) | | 199 909 19 |
| | 24. Amount of This Invoice (17 less 23) | | \$23,203.13 |
| | | | |

Audit Report No. C4-121-61

20 September 1951

Subject: Review of Partial Payment Invoice
The Murray Corporation of America
Detroit, Michigan

Purchase Order No. KFW 49000 Under Prime Contract AF 33(038)-18:81 Invoice No. 02-21-1 \$23,203.13

To: Auditor General, USAF
Central District
Resident Office
Kaiser-Frazer Corporation
Willow Run, Michigan

- 1. At the request of the Resident Auditor in letter dated 4 September 1951, an accounting review has been made of the partial payment request of The Murray Corporation of America, Detroit, Michigan, dated 10 August 1951. The request was submitted in the amount of \$23, 203.13 to cover 90% of the direct costs incurred from 1 February 1951 to 31 May 1951 in the sum of \$25,781.26.
- 2. The AF Accountant ascertained that the costs said to have been incurred were duly recorded on the contractor's books and that no indirect costs were included therein. The contractor is also performing under other Air Force contracts.
- 3. In view of the above facts, it is recommended that the partial payment be approved.

David M. Kramer, 1st Lt. USAF, for

William H. Walker
Lt. Colonel, USAF
Chief, Central District

ce: AFAUDC-ID w/2c. . AFAUDC-ID w/e for AG. Purchase Order KFW-49000 Partial Payment Invoice Number 02-21-2

THE MURRAY CORPORATION OF AMERICA

7700 Russell Street. Detroit 11, Michigan

September 21, 4951

To: Kaiser-Frazer Corporation Willow Run, Michigan

A partial payment of \$95,924.46 is requested on contract AF33-(038)-18481 with expense detailed on Exhibit A attached, as support of the costs incurred.

I hereby certify that the above bill is correct and just, that payment therefor has not been received, and that the bill is presented with the knowledge that the amount paid hereunder will become the basis for a claim against the United States Government.

Company Murray Corporation of America Signature N. Lanury
Title Chief Acct. Spring Div.

EXHIBIT A

SCHEDULE SUPPORTING PARTIAL PAYMENT INVOICE TOTAL COST BASIS

Contractor's Name The Murray Corporation of America

Address · 7700 Russell Street, Detroit 11, Michigan

Contract No. AF33-(038)-18481 Amount of Contract \$11,000,000,00 Date September 21, 1951 P. P. Invoice M 02-21-2

STATEMENT OF PARTIAL COSTS INCURRED FROM JUNE 1, 1951 TO AUGUST 31, 1951

| 1. Direct Material | | 40,069.95 | |
|--------------------------------|---|----------------|---------------|
| 2. Direct Labor | | 92,294.04 | |
| 3. Manufacturing & Produc- | | | • |
| tion Expense | | | |
| (Specify rate%) | | | |
| 4. Other Direct Costs (if | Burden on the | | |
| any specify) | above costs will | | |
| 5 | be included in a | | • |
| 6 | separate request | | |
| 7. Total | at a later date. | | |
| 8. General & Administrative | | | |
| Expenses | | | |
| (Specify rate%) | | | |
| (Specify late | | | 4 |
| 9. Total Costs (7 plus 8) | | | \$132,363.99 |
| 10. Cost or Negotiated Unit | Cost of Items | | |
| Delivered | Cost of reems | | 0 |
| . Delivered | | | |
| 11. Costs Subject to Partial P | ayment (9 less | | |
| . 10) | ayment (b less | | \$132,363.39 |
| 12. 10% of Item 11 | | - | 13,236.40 |
| 12. 10% of Item 11 | | | |
| 10 Charles Flight for Postio | Dowment /11 | | * |
| 13. Total Eligible for Partia | 1 Payment (11 | | \$119,127.59 |
| less 12) | 1. Dommonto to | | ψ1.0,1.m····· |
| 14 Total Amount of Partia | | 23,203.13 | |
| Date | | 0 | |
| 15. Recoupments to Date | | | |
| | | * | |
| 16. Unrecouped Partial Pay | ments (14 less | | 23,203.13 |
| 15) | | | 20,200.10 |
| | | / | \$ 95,924.46 |
| 17. Balance (13 less 16) | | 110 107 50 | |
| 48. Amount in Line 13 Above | *************************************** | 119,127.59 | |
| 19. Total Contract | | | |
| 20. Contract Price of Items | | | |
| Delivered : | -0- | | |
| 21. Contract Price to Be De- | ************ | • | |
| livered (19 less 20) | | | |
| 22. 90% of Line 21 | | \$9,900,000.00 | |
| 23. Positive Balance, if any | (18 less 22) | | |
| | | 7 . | 0:05:004.40 |
| 24. Amount of This Invoice | $(17 less 23) \dots$ | | \$ 95,924 46 |
| * | | | |

Department of the Air Force Comptroller

AUDITOR GENERAL.

Reply to: Auditor General, USAF Hq. Central District W. Warren & Lonyo Aves Detroit 32, Michigan

Audit Report No. C4-121-65

19 October 1951

Subject: Review of Partial Payment Invoice
The Murray Corporation of America
Detroit, Michigan
Purchase Order No. KFW 49000
Under Prime Contract AF 33(038)-18481
Invoice No. 02-21-2 \$95,924.46

To: Detroit Air Regional Office
Central Air Procurement District
Attention: Contracting Officer
West Warren and Lonyo Avenues
Detroit 32, Michigan

- 1. At the request of the Resident Auditor, Kaiser Frazer Corporation, in letter dated 8 October 1954, an accounting review has been made of the partial payment request of The Murray Corporation of America, Detroit, Michigan dated 21 September 1951. The request was submitted in the amount of \$95.924.46 to cover 90% of direct preproduction costs incurred from 1 June 1951 to 31 August 1951 in the amount of \$106,582.73.
 - 2. The AF Accountant ascertained that the costs said to have been incurred were duly recorded on the contractor's books. The labor charges include overtime premium in the amount of \$5,332.99 which has been approved.

3. In view of the above facts, it is recommended that the partial payment request be approved.

David M. Kramer, 1st Lt. USAF, for

William H. Walker, Lt. Colonel, USAF Chief, Central District

cc: AFAUDC-ID w/2c AFAUDC-ID w/c for AG.

Purchase Order KFW-49000 Partial Payment Invoice Number 02-21-3

THE MURRAY CORPORATION OF AMERICA

7700 Russell Street Detroit 11, Michigan

October 24, 1951

To: Kaiser-Frazer Corporation Willow Run, Michigan

A partial payment of \$44,821.61 is requested on contract AF33-(038)-18481 with expense detailed of Exhibit A attached, as support of the costs incurred.

I hereby certify that the above bill is correct and just, that payment therefor has not been received, and that the bill is presented with the knowledge that the amount paid hereunder will become the basis for a claim against the United States Government.

Company Muray Corporation of America Signature N. Lanary
Title Chief Acct. Spring Div.

Under the provisions of the contract I hereby authorize and approve a partial payment in the amount of \$44,821.61.

Fred Zaumer Captain, USAF Contracting Officer

EXHIBIT A

SCHEDULE SUPPORTING PARTIAL PAYMENT INVOICE TOTAL COST BASIS

Contractor's Name The Murray Corporation of America

Address 7700 Russell Street, Detroit 11, Michigan

Contract No. AF33-(038)-18481 Amount of Contract \$11,000,000.00 Date October 24, 1951 P. P. Invoice 02-21-3

STATEMENT OF PARTIAL COSTS INCURRED FROM AUGUST 31 (FINAL GLOSING) TO SEPTEMBER 30, 1951

| 1. Direct Material \$ 60,364.44 | 1 |
|--|---|
| 2. Direct Labor | , |
| 3. Manufacturing & Produc- | |
| tion Expense | |
| (Specify rate%) | |
| | |
| | • . |
| any specify | |
| 5 be included in a | 4.7 |
| 6 separate request | 20 |
| 7. Total at a later date. | * |
| 8. General & Administrative | |
| Expenses | |
| (Specify rate%) | |
| | |
| 9. Total Costs (7 plus 8) | \$182.165.78 |
| 10. Cost or Negotiate 1 Unit Cost of Items | |
| Delivered | -0 |
| | A second designation of the state of |
| 11. Costs Subject to Partial Payment (9 less | |
| 10) | 182,165.78 |
| 12. 10% of Item 11 | . 18,216.58 |
| 12. 10% of Item 11 | |
| 13. Total Eligible for Partial Payment (11 | |
| less 12) | \$160,949,20 |
| | |
| 14. Total Amount of Partial Payments to | 0 |
| | 10 |
| 15. Recoupments to Date | |
| and the second s | |
| 16. Unrecouped Partial Payments (14 less | |
| 15) | \$119,127.59 |
| | AN ARRANGAMENT AND A STREET A P. |
| 17. Balance (13 less 16) | 44,821.61 |
| 18. Amount in Line 13 Above \$ 163,949.2 | 30) |
| 19. Total Contract \$11,000,000.00 | |
| 20. Contract Price of Items | |
| Delivered0 | |
| NATURE AND ADDRESS OF THE PARTY. | • |
| 21. Contract Price to be De- | 1.5 |
| Delivered (19 less 20) \$11,000,000.00 | |
| 22 90% of Line 21 | 00 |
| 23. Positive Balance, if any (18 less 22) | 0 |
| 20. Toshive Balance, if any (10 less 22) | |
| 24 Amenit of This Invoice (17 loss 22) | \$ 44,821.61 |
| 24. Amount of This Invoice (17 less 23) | · Halopy OI |
| | |

Purchase Order KFW-49000 Partial Payment Invoice Number 02-21-4

THE MURRAY CORPORATION OF AMERICA 7700 Russell Street Detroit 11, Michigan

December 10, 1951.

To: Kaiser-Frazer Corporation Willow Run, Michigan

A partial payment of \$301,239.90 is requested on contract AF33-(038)-18481 with expense detailed on Exhibit A attached, as support of the costs incurred.

I hereby certify that the above bill is correct and just, that payment therefor has not been received, and that the bill is presented with the knowledge that the amount paid hereunder will become the basis for a claim against the United States Government.

Company Murray Corporation of America Signature N. Lanary.
Title Chief Acct.

Under the provisions of the contract I hereby authorize and approve a partial payment in the amount of \$301,239.90.

Ambrose J. Singer Contracting Officer

EXHIBIT A

SCHEDULE SUPPORTING PARTIAL PAYMENT INVOICE TOTAL COST BASIS

Contractor's Name The Murray Corporation of America

Address 7700 Russell Street, Detroit 11, Michigan

Contract No. AF32-(038)-19481 Amount of Contract \$11,000,000.00 Date December 10, 1951 P. P. Invoice, 02-21-4

STATEMENT OF PARTIAL COSTS INCURRED FROM INCEPTION TO OCTOBER 31, 1951

| 2. | Direct Material (1331 & 4406) \$ 105,429 Direct Labor (1377) 27,251 Manufacturing & Production Expense | | |
|------------|--|----------|--------------|
| 210 | (4425 less Admin.). (Specify rate | 1.35 | |
| 15. | Other Direct Costs (if any specify) Pre-Froduction Costs—Labor | | |
| 7. | Total \$ 516,730 | - 5-5 // | |
| 8. | General & Administrative Expenses (Specify rate%) | 3.65 | |
| | Total Costs (7 plus 8) | | \$532,033.77 |
| 10. | Cost or Negotiated Unit Cost of Items Delivered (\$16,841.00 x 90%) | • | 15,156.90 |
| | Costs Subject to Partial Payment (9 less | | |
| | 10) | | \$516,876.87 |
| 12. 13. | Total Eligible for Partial Payment (11 | | 51,687.69 |
| 14. | less 12) | | \$465,189.18 |
| 15. | Date | | |
| 16. | Unrecouped Partial Payments (14 less | | |
| | 15) | | \$163,949.20 |
| | Balance (13 less 16) | | \$301,239.98 |
| | Amount in Line 13 above \$ 465,189 |).18 | |
| | Total Contract \$11,000,006.00. Contract Price of Items | | |
| | Delivered 16,841.00 | | |
| -21. | Contract Price to Be De- livered (19 less 20) \$10,983,159.00 | 4 | |
| 22. | 90% of Line 21 | 10 | |
| 23. | 90% of Line 21 | | ·() |
| 24. | Amount of This Invoice (17 less 23) | | \$301,239.90 |

DEC. 31, 19 No.....

Purchase Order KFW-49000 Partial Payment Invoice Number 02-21-5

THE MURRAY CORPORATION OF AMERICA

7700 Russeli Street Detroit 11, Michigan

To: Kaiser-Frazer Corporation Willow Run, Michigan

A partial payment of \$267,971.19 is requested on contract AF33-(038)-18481 with expense detailed on Exhibit A attached, as support of the costs incurred.

I hereby certify that the above bill is correct and just, that payment therefor has not been received, and that the bill is presented with the knowledge that the amount paid hereunder will become the basis for a claim against the United States Government.

Company Murray Corporation of America Signature N. Lanary Title Chief Acet. Under the provisions of the contract I hereby authorize and approve a partial payment in the amount of \$267,971.19.

Ambrose J. Singer Contracting Officer

EXHIBIT A

SCHEDULE SUPPORTING PARTIAL PAYMENT INVOICE TOTAL COST BASIS

Contractor's Name The Murray Corporation of America

Address 7700 Russell Street, Detroit 11, Michigan

Contract No. AF33-(038)-18481 Amount of Contract \$11,000,000.00

Date December 20, 1951 P. P. Invoice 02-21-5

STATEMENT OF PARTIAL COSTS INCURRED FROM NOVEMBER 1 TO NOVEMBER 30, 1951

| 1. | Direct Material (1331, 4406 & 1377- | | |
|---------|---|-----------------|--|
| | mat'l) | \$ 214,376.20 | |
| 2. | Direct Labor (1377 Labor) | 54,917,99 | |
| | Manufacturing & Production Expense | , | |
| | (4425 less Admin.) (Specify rate%) | 252,532.29 | |
| 4 | | . 202,002120 | |
| | Other Direct Costs (if any specify) | 405 000 11 | |
| | Pre-Production Costs-Labor | 195,372.44. | |
| . 6. | Pre-Production Costs-Mat'l | 82,637.69 | |
| | | | |
| 7. | Total | \$ 799,836.61 | |
| . 8. | General & Administrative Expenses | | |
| | (Specify rate%) | 29,942.84 | |
| | topically said to the said to | 20,000 | |
| 0 | Total Costs (7 plus 8) | | 2000 770 45 |
| | | | \$829,779.45 |
| 11). | Cost of N gotiated Unit Cost of Items | | |
| | Delivered (16,841.00 x 90%) | | 15,156.90 |
| | | | |
| 11. | Costs Subject to Partial Payment (9 less | | |
| | 10) | | \$814,622.55 |
| 12. | 10% of Item 11 | | 81,462.26 |
| | Total Eligible for Partial Payment (11 | | 01,102.20. |
| | less 12) | | \$733,160.29 |
| 1.4 | Total Amount of Partial Payments to | | \$ 155,100.20 |
| 14. | | | |
| | Date | \$ 163,949.20 | |
| 15. | Recoupments to Date | 301,239.90 | |
| | H ** * 1 A A A A A A A A A A A A A A A A | | |
| 16. | Unrecouped Partial Payments (14 less | | |
| | 15) | , - | \$465,189.10 |
| | ** | • | place and deprese of the Publishers and address on the |
| 17. | Balance (13 less 16) | | \$267,971.19 |
| 18 | Amount in Line 13 above | \$ 733,160.29 | φ201,511.15 |
| | Total Contract \$11,000,000.00 | \$ 100,100.23 | * |
| | | | |
| 20. | Contract Price of Items | | |
| | Delivered 16,841.00 | | |
| | * ** ********************************* | | |
| 21. | Contract Price to Be De- | 1 | |
| | · livered (19 less 20) \$10,983,159.00 | | • |
| 22. | 90% of Line 21 | \$9,884,843.10 | |
| | Positive Balance, if any (18 less 22) | + o incompanion | 0 |
| | 1 | 1 | |
| .94 | Amount of This Invoice (17 less 23) | | 0000.004 45 |
| - N'E . | Amount of This thvoice (17 less 23) | | \$267,971.19 |
| | | | |

MURRAY EXHIBIT No. 8

Photostatic Copies of Partial Payment Requests from Murray to Wright bearing approval of Air Force Contracting Officer

> Partial Payment Invoice Number 1 Contract No. AF33(038)-18132 Date 10-30-51

THE MURRAY CORPORATION OF AMERICA

7700 Russell Street Detroit 11, Michigan

To: Wright-Aeronautical Corp. Wood-Ridge, N. J.

A partial payment of 371,420.38 is requested on Contract AF33-(038)-18132 with expense detailed on Exhibit A attached, as support of the costs incurred.

Approved in the amount of \$371,420.38

Samuel M. Jacoby, Contracting Officer

EXHIBIT A

SCHEDULE SUPPORTING PARTIAL PAYMENT . INVOICE TOTAL COST BASIS

Contractor's Name The Murray Corporation of America

· Address' 7700 Russell Street, Detroit 11, Michigan

Contract No. AF33(038)-18132 Amount of Contract \$15,330,000 Date 10-30-51 P. P. Invoice No. 1

STATEMENT OF PARTIAL COSTS INCURRED FROM 4-1-51 TO 9-30-51

| | | 2 000 800 00 | |
|-------|--|---------------|-------------|
| | Direct Material | \$ 368,760.69 | |
| 2. | Direct Labor-Tooling hours at agreed | | |
| | rates | 126,466.49* | , |
| 3. | Manufacturing and Production Expense | / | |
| | (Specify rate%) | | * , |
| 4 | Other Direct Costs (If any specify) | | |
| | | | |
| | | ********* | |
| | Total | | |
| | | | 1 |
| 8. | General and Administrative Expenses | i. | |
| | (Specify Rate%) | | \$ |
| 9. | Total Costs (7 plus 8) | | 495,227.18 |
| 19, | Cost or Negotiated Unit Cost of Items | | |
| | Delivered | | ******* |
| 11. | Cost Subject to Partial Payment (9 less | | |
| | 10) | | 495,227.18 |
| 12: | 25% of Item 11 | | 123,806.80 |
| | | | - |
| 13 | Total Eligible for Partial Payment (11 | | |
| | less 12) | | 371,420.38 |
| 1.7 | Total Amount of Partial Payments to | | |
| 14. | Date | * | |
| | | | - |
| | Recoupments to Date | | .* |
| 16. | Unrecouped Partial Payments (14 less | | |
| | 15) | | ******* |
| | | | |
| | Balance (13 less 16) | | 371,420.38 |
| 18. | Amount in Line 13 Above | 371,420.38 | |
| 19. | Total Contract \$15,330,000 | | |
| 20. | Contract Price of Items | | |
| | Delivered | | 1 |
| , | and agreement of the first of the control of the co | | |
| 21. | Contract Price to be De- | • | |
| | livered (19 less 20) 15,330,000 | | |
| 00 | 75% of Line 21 | 11,497,500 | |
| halas | 10 % Of Lifte 21 | 11,457,000 | |
| 00 | Position Poleman if only (40 least 00) | G A | |
| 23. | Positive Balance, if any (18 less 22) | | |
| | A STATE OF THE STA | | 0.84 /00 00 |
| 24. | Amount of this Invoice (17 less 23) | | 371,420.38 |
| • | | | |

^{*}Tooling rates used are those originally quoted in our letter contract. These rates are subject to change due to cost increases incurred during the period covered by this invoice.

"I certify that the above statement of costs is just and correct to the best of my knowledge and belief, that payment therefor has not been received, but that it has been prepared from the books of account and records of The Murray Corporation of America."

Signature R. S. Castle
Title Chief Accountant—Fender Division

Incl 1 to DOI 70-83, 16 Jun 51

> Partial Payment Invoice Number 2 Contract No. AF33(038)-18132 Date 12-6-51

THE MURRAY CORPORATION OF AMERICA 7700 Russell Street Detroit 11, Michigan

To: Wright-Aeronautical Corp. Wood-Ridge, N. J.

A partial payment of 139,407.29 is requested on Contract AF33(038)-18132 with expense detailed on Exhibit A attached; as support of the costs incurred.

Approved in the amount of \$139,407.29

Samuel M. Jacoby, Contracting Officer

Date Dec. 21, 1951

EXHIBIT A

SCHEDULE SUPPORTING PARTIAL PAYMENT INVOICE TOTAL COST BASIS

Contractor's Name The Murray Corporation of America

Address 7700 Russell Street, Detroit 11, Michigan

Contract No. AF32 (038)-18132 Amount of Contract \$15,330,000 Date 12-6-51 P. P. Invoice No.

STATEMENT OF PARTIAL COSTS INCURRED FROM 10-1-51 TO 10-31-51

| • | 1. Direct Material | \$ 581,523.59 | |
|---|---|--|----------------------------|
| | 2. Direct Labor—Tooling hours at agreed rates | 217,599.75* | • |
| | 3. Manufacturing and Production Expense | p. an although to come an amount of the con- | |
| | (Specify rate%) | | , |
| | 4. Other Direct Costs (If any specify) | | • |
| | 5 | | • |
| | 6 | | |
| | 7. Total | | |
| | 8. General and Administrative Expenses | | - * |
| | (Specify Rate %) | | S |
| | 9. Total Costs (7 plus 8) | | 799,123.34 |
| | 10. Cost or Negotiated Unit Cost of Items | • | |
| | · Delivered | • | 118,019.78 |
| | 11. Cost Subject to Partial Payment (9 less | | |
| | 10) | | 681,103.56 |
| | 12. 25% of Item 11 | | 170,275.89 |
| | | | |
| | 13: Total Eligible for Partial Payment (11 | | 4 9 |
| | less 12) | | 510,827.67 |
| | 14. Total Amount of Partial Payments to | | Se . |
| | Date | | |
| | 15. Recoupments to Date | | * |
| | 16. Unrecouped Partial Payments (14 less | | |
| | 15) | | 371,420.38 |
| | 17. Balance (13 less 16) | | 139,407.29 |
| | ·18. Amount in Line 13 Above | 510,827.67 | |
| | 19. Total Contract \$15,330,000 | | |
| | 20. Contract Price of Items | | |
| | Delivered | | |
| | | | |
| | 21. Contract Price to be De- | | |
| | livered (19 less 20) 15,200,178.24 | | . : |
| | 22. 75% of Line 21 | | |
| | | 1 CONTROL OF SERVICE SERVICES | |
| | 23. Positive Balance, if any (18 less 22) | | |
| | | | |
| | 24. Amount of this Invoice (17 less 23) | | \$139.407.29 |
| | | | DAMES AT LINE AND ADDRESS. |

^{*}Tooling rates used are those originally quoted in our letter contract. These rates are subject to change due to cost increases incurred during the period covered by this invoice.

Approved invoice for this amount examined andperforated. See General Secty. File. "I certify that the above statement of costs is just and correct to the best of my knowledge and belief, that payment therefor has not been received, but that it has been prepared from the books of account and records of The Murray Corporation of America."

Signature R. Castle Title Chief Accountant—Fender Division

Incl 1 to DOI 70-83,

For Contracting Officer's approval see Chet Vaughan. Treat as Invoice per G. Hoffman.

MURRAY EXHIBIT No. 9

Photostatic Copy of Letter dated 13 December 1951 from Subcontracting Officer of the Air Force supervising Murray's Subcontract with Wright to the Prime Contracting Officer supervising Wright's Prime Contract No. AF 33(038)-18132 Re Procedure for Processing Partial Payments from Wright to Murray with answering Letter appended.

DETROIT AIR REGIONAL OFFICE

JDY/jlh/29 13 December 1951

CEHDC

Subject: Murray Corporation Subcontractor Contract AF 33(038)-18132

To: AF Representative
Wright Aeronautical Division
Curtiss-Wright Corporation
Wood-Ridge, New Jersey

Attention: Mr. Samuel M. Jacoby

- 1. Attached hereto find two (2) copies of Rartial Payment Invoice No. 1 in the amount of \$371,420.38 dated 30 October 1951. Also attached find two (2) copies of Partial Payment Invoice No. 2 in the amount of \$139,407.29 dated 6 December 1951.
- 2. Also attached find two (2) copies of Cost Analyst Report, both dated 10 December 1951. During this review, it was found that in some cases, there were found costs pertaining to special tools which had been invoiced by vendors and paid for 100% by Murray.
- 3. The normal procedure as practiced by this office in regard to contractor's receipt of Government furnished property, is that the Government accepts full title and assumes accountability simultaneously.
- 4. It was believed by the undersigned that the subcontractor would be reimbursed for all items of cost pertaining to purchases of special tools and to such subcontractors cost for plant rearrangement on a 100% basis. It was further believed by the undersigned that any reference to 75% partial payment as stated in letter of agreement between the prime and the subcontractor was intended to be a method of payment to the subcontractor for cost of materials against and labor costs within the subcontractor's own plant(s).

- 5. The total amount of Invoices 1 and 2 is \$510,827.67 which is represented by the contractor to be 75% of cost which is computed on the basis of deductions for items delivered, reference Invoice No. 2, line 10.
- 6. Your attention is invited to the fact that the undersigned has not received a copy of the definitive agreement in this case. It is requested that you advise the procedure to be used by the secondary Contracting Officer in connection with partial payment invoices.
- 7. It is suggested that Invoices No. 1 and 2 be subject to approval of the prime Contracting Officer, inasmuch as the purpose of this letter is to confirm only that the costs appearing on the partial payment invoices are reflected on the records and accounts of the subcontractor.

James D. Young Contracting Officer

Incls: a/s

Detroit Air Regional Office, Central AF Procurement District, West Warren Avenue & Lonyo Boulevard, Detroit 32, Michigan, Subj: Murray Corporation Subcontractor. Contract AF 33(038)-18132

WARWC-8 (13 December 1951) 1st Ind. IIX/el

AF Plant Representative, Curtiss-Wright Corporation, Wright Aeronautical Division, Wood-Ridge, New Jersey 20 December 1951

To: Air Regional Representative, Detroit Regional Office, Central Air Procurement District, West Warren Avenue & Lonyo Boulevard, Detroit 32, Michigan.

- 1. This is to advise that partial payment invoices No. 1 dated 30 October 1951 for \$371,420.28 and partial payment invoice No. 2 for \$139,407.29 dated 6 December 1951 are approved by the undersigned, based on the Cost Analyst's reports dated 10 December 1951.
- 5.2. The definitive contract in this matter has not as yet been formalized. The letter contract contains the usual

partial payment clause providing for partial payment up to 75% of costs.

- 3. It is suggested that the following procedure be used for partial payments as requested in Par. 6 of basic communication. You will prepare under separate letter a cost analysis report and a certification that the costs are proper and your recommendation as to partial payments. Upon receipt, the Prime Contracting Officer will review and approve partial payments.
- 4. With reference to special tools, accountability for same will be picked up by the AFO upon the submission of an inventory which will be submitted by each vendor upon an effective date to be announced by Wright Aeronautical Division. Accountability will not be picked up on individual payments.
 - 5. In hardship cases, a vendor will be paid 100% upon the submission of an inventory and transfer of title to the USAF.
 - 6. It is believed that paragraphs 4 and 5 above clarify your statements in paragraphs 3 and 4 of basic communication.

Samuel M. Jacoby 5 Contracting Officer

ey: O. C. Becker

Resident Auditor

/ MURRAY EXHIBIT No. 10

Photostatic Copies of Remittance Advices Covering Partial Payments to Murray from Kaiser prior to January 1, 1952.

| | Date | of | Num | ber of | | Amount of | | Pick- |
|---|-----------|---------|---------|---------|------|------------|-------------|-------|
| | Posting | Invoice | Voucher | Invoice | Code | | Total | Up |
| (| Oct 10 51 | | 5,834 | | * | | | |
| (| oct 10 51 | 10 08 | 10 | 2,211 | 1 | 23,203.13G | 23,203.13** | .00 |

Ck #5834 10-10-51 D/S 10-15

| ·Date | of | Num | Number of | | | | |
|-----------|-----------|---------|-----------|------|----------------------|-------------|-------------|
| Posting | Invoice. | Voucher | Invoice | Code | Amount of Invoice | Total | Pick- Up |
| Oct 30 51 | | 7,317 | | | | | .00 |
| Oct 30 51 | 8 21 | 21 | 2,212 | 1 | 95,924.46G | 95,924.46** | |
| Ck #7317 | 7 . 10-30 |)-51 D/ | S 10-4 | 2 | | 4 | |

KAISER MANUFACTURING CORPORATION Willow Run, Michigan

| Date | of | Numi | per of | | | | |
|-----------|---------|---------|---------|------|----------------------|-------------|-------------|
| Posting | Invoice | Voucher | Invoice | Code | Amount of Invoice | Total | Pick- Up |
| Dec 27 51 | • . | 11,941 | | | | d | .00** |
| Dec 27 51 | 10 24 | 21 | 2,213 | . 3 | 44,821.61G | 44,821.61** | • |
| Ck #119 | 41 12/ | 27 D/S | 12-40 | | | 1 | |

KAISER MANUFACTURING CORPORATION Willow Run, Michigan

MURRAY EXHIBIT No. 11

Photostatic Copies of Remittance Advices covering Partial Payments to Murray from Wright prior to January 1, 1952.

| WRIGHT AERO WOOD-RIDGE, | | e' re | REMIT | TANCE | STATEMENT |
|----------------------------|-------------------------------|-------|-------|-------|----------------------------|
| Vendor Code Number | Voucher or DM-CM Number | | | | Net Amount |
| | RA #75298 RA #75299 | | | | \$371,420.38 139,407.29 |
| A/C 2020 | | | | | \$510,827.67 |

Ck #80768 12/27 D/S 12-40

REMITTANCE ADVICE WRIGHT AERONAUTICAL

(A Division of Curtiss Wright Corporation)

Wood-Ridge, N. J.

TENDERS YOU THE ENCLOSED CHECK IN FULL PAYMENT OF INVOICES LISTED BELOW. NO RECEIPT REQUIRED

Remittance Advice No. 75298 December 27, 1051 MK Net 12-27

The Murray Corporation of America 770° Russell Street
Detroit 11, Michigan

Explanation

| Invoice | Vouchar . | Invoice | Pur- | Vendor's | | ounts . |
|--------------------|-----------|----------|--------|----------|------------|------------|
| Register Number | | - Date | _ | | Materials | Total |
| 9888 | 12-10297 | 10-31-51 | J 1671 | 1. | 371,420.38 | 371,420.38 |
| | A/C 2020 | | | | | |

REMITTANCE ADVICE WRIGHT AERONAUTICAL

(A Division of Curtiss-Wright Corporation)

Wood-Ridge, N. J.

TENDERS YOU THE ENCLOSED CHECK IN FULL PAYMENT OF INVOICES LISTED BELOW. NO RECEIPT REQUIRED

Remittance Advice No. 75299 December 27, 1951 MK Net 12-27

The Murray Corporation of America 7700 Russell Street Detroit 11, Michigan

Explanation

| | - | | | | | |
|---------------------|--------------|---------|--------|----------|------------|------------|
| Invoice Register | / Voucher | Invoice | Pur- | Vendor's | Am | ounts |
| Number | Number | Date ' | | | Materials | Total |
| 9888 | 12-10298 | 12-6-51 | J 1671 | 2 | 139,407.29 | 139,407.29 |
| * | A/C 2020 | | | | | |

MURRAY EXHIBIT No. 12

Excerpts from Murray Annual Report for year ended August 31, 1952.

THE MURRAY CORPORATION OF AMERICA BALANCE SHEET

| | August 31, | |
|--|--------------|------------------------------|
| CURRENT ASSETS: | 1952 | 1951 |
| Cash | \$ 7,678,640 | \$10,963,910 |
| United States Government securities-at. | | |
| cost and accrued interest | 5,103,080 | 22,500 |
| Refundable federal taxes arising from carry- | | |
| back of unused excess profit credit | 400,000 | and the second of the second |
| Trade accounts receivable, less provision of | 11 | |
| \$50,000 for doubtful accounts | *3,250,598 | 8,466,581 |
| . Finished and in-process tools and dies for | | |
| customers | 3,635,576 | 2,889,792 |
| . Inventories—at lower of cost (generally | | |
| first-in, first-out method) or market: | • | |
| Finished and in-process products and | 16 000 101 | 14 000 400 |
| raw materials | 10,339,491 | |
| Manufacturing supplies | 1,764,613 | 1,645,197 |
| Total recoverable amounts applicable to gov- ernment contracts | 6,486,840 | 1,592,076 |
| Prepaid taxes, insurance, and other expenses | 918,848 | 864,485 |
| repaid taxes, insurance, and other expenses | 310,040 | 604,400 |
| TOTAL CURRENT ASSETS | \$39,577,686 | 841,267,971 |
| | | |
| AND CONTRACTOR OF THE CONTRACT | | ** |
| INVESTMENTS AND OTHER ASSETS: | * 3 | * |
| | | |

235,080

Securities and miscellaneous accounts.....

PROPERTY, PLANT, AND EQUIPMENT-

| at cost (except for write-downs as of January 1, 1932, applicable to certain land and | August 31, 1952 | August 31, 1951 |
|---|-------------------------|-----------------------------|
| buildings), less accumulated depreciation | | |
| and amortization: | | |
| ** | | |
| Land , | \$.1,185,326 | \$ 1,180,298 |
| Buildings and land improvements | 7 839,605 | 7,805,054 |
| Machinery and equipment | 21,874,485 | 20,934,809 |
| Improvements to leased property | | 1,337,137 |
| Construction and machinery, installations | | |
| in progress | 352,812 | 456,434 |
| | \$32,619,346 | \$31,713,732 |
| Less accumulated depreciation and amor- | | |
| tization | 16,985,285 | 15,798,661. |
| | 4-5-4-6-9 | And our obj |
| Tools and dies, less amortization | \$15,634,061 686,770 | \$15,915,071 |
| | - | |
| Total Property, Plant, and Equipment | \$16,320,831 | \$16,357,118 |
| | | Mandated Insurance Services |
| | \$56,331,749 | \$57,360,169 |

| CURRENT LIABILITIES: | August 31, 1952 | August 31, |
|---|--------------------|--------------|
| Trade accounts payable | \$ 3,733,811 | \$ 5,951,648 |
| sion plans | 2,269,562 | 2,282,551 |
| . Taxes withheld from employees | 364,714 | 628,113 |
| Property, pay roll, and excise taxes | 601,511 | 765,744 |
| Dividends payable | 533,455 | 1,042,079 |
| Federal taxes on income | \$ 6,640,734 | \$18,403,135 |
| . Less United States Government securities to | 4. | |
| be applied in payment thereof | 5,310,640 | 16,914,375 |
| | \$ 1,330,094 | \$ 1,488,760 |
| Total Current Liabilities | \$ 8,833,147 | \$12,158,895 |
| | | |
| | | • |
| OTHER LIABILITIES: | | |
| Deferred compensation | 44,958 | 43,943 |

SHAREOWNERS' INVESTMENT:

| SHAREOWNERS' INVESTMENT: | 4 - 4 | |
|---|--------------|---------------|
| Cumulative Preferred Stock, convertible, par value \$50.00 a share; redemption price to October 1; 1955, \$52.00 a share; sinking fund payments begin in 1955. | | • |
| Authorized at August 31, 1952-161,277 | | |
| shares | 4 | |
| Issued at August 31, 1952. | | |
| 4% Series 63,467 shares | • | |
| Less in treasury 11,600 shares | | |
| | | |
| Outstanding at August 81, | | |
| 1952 51,867 shares | 9 9 599 950 | e 9 703 850 |
| Common Stock, par value \$10.00 a share: | 5 2,000,000 | φ 2,100,000 |
| | | 4.5 |
| Authorized 1,750,000 shares, including | | |
| 103,734 shares reserved at August 31, | | |
| 1952, for conversion of outstanding | * | |
| Preferred Stock | | |
| Issued at August 31, | | |
| 1952 1,034,890.75 shares | | * * |
| Less in treasury 19,837 shares | | |
| | | |
| Outstanding at: Aug- | | |
| ust 31, 1952 1,015,053.75 shares | 10,150,537 | 10,150,537 |
| Capital paid in by shareowners in excess of | | |
| par value of capital stock | 6,628,408 | 6,618,039 |
| Earnings retained for use in the business | 0,020,110 | 0,0,0,0,0 |
| since January 1, 1933: | | |
| | * | |
| Reserved for possible losses arising from | 4. | |
| terminations of certain production | 4.5 | |
| contracts | - | 2,000,000 |
| Not reserved for specific purposes (of | | |
| which \$3,414,938 was not available at | * | |
| August 31, 1952, for the payment of | the same . | 4.4 |
| dividends on Common Stock under the | * - ** | |
| terms of the Preferred Stock issue) | 28,081,549 | 24,184,965 |
| | | |
| Total Shareowners' Investment | \$47,453,644 | \$45,657,331 |
| | ,, | 1 |
| | 356 331 749 | \$57,860,169 |
| | 000,001,140 | . 601,000,193 |

AUDITORS' REPORT

Board of Directors,
The Murray Corporation of America,
Detroit, Michigan.

We have examined the balance sheet of The Murray Corporation of America as of August 31, 1952, and the related statements of net earnings and earnings retained, for use in the business for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying balance sheet and statements of net earnings and earnings retained for use in the business present fairly the financial position of The Murray Corporation of America at August 31, 1952, and the results of its operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Touche, Niven, Bailey & Smart, Certified Public Accountants

Detroit, Michigan October 29, 1952

MURRAY EXHIBIT No. 13

Excerpts from Murray Annual Report for year ended August 31, 1945.

ERNST & ERNST Detroit

October 31, 1945

Board of Directors,
The Murray Corporation of America,
Detroit, Michigan.

We have examined the balance sheet of The Murray Corporation of America as of August 31, 1945, and the statements of profit and loss and surplus for the year then ended, have reviewed the system of internal control and the accounting procedures of the Corporation and, without making a detailed audit of the transactions, have examined or tested accounting records of the Corporation and other supporting evidence, by methods and to the extent we deemed appropriate. Our examination was made in accordance with generally accepted auditing standards applicable in the circumstances and included all procedures which we considered necessary.

In our opinion, the accompanying balance sheet and related statements of profit and loss and surplus present fairly the position of The Murray Corporation of America at August 31, 1945, and the results of its operations for the year, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Ernst & Ernst
Certified Public Accountants

THE MURRAY CORPORATION OF AMERICA BALANCE SHEET—August 31, 1945

| CURRENT A | SSETS |
|-----------|-------|
|-----------|-------|

| Cash | | \$ 4,028,826 |
|--|-------------|--------------|
| War Savings Bonds on hand for sale to em- | | |
| ployees and cash on deposit for purchase | | |
| thereof | • | 108,864 |
| Trade accounts receivable: | | 1 |
| Billings for costs and fees on cost-plus-a- | | 1 |
| fixed-fee war contracts | \$1,095,305 | |
| Other trade accounts, less reserve of \$10,000 | 1,394,393 | 2,489,698 |
| . Totale accounts, less reserve of \$10,000 | 1,034,030 | 2,400,000 |
| Unbilled costs and fees on cost-plus-a-fixed- | | |
| | | |
| fee contracts (all uncompleted contracts | | |
| were terminated prior to August 31, 1945) | | 13,076,290 |
| Claims under terminated fixed-price war con- | | |
| tracts | | 2,817,248 |
| Amount receivable from government agency | | |
| for plant facilities | | 71,198 |
| Refundable portion of federal taxes on income | | 228,205 |
| Inventories for civilian products—at lower of | | |
| cost (generally first-in, first-out method) or | | |
| market: | | |
| Finished and in-process products and | | 4 |
| raw materials | \$1,788,911 | |
| Manufacturing supplies | 767,968 | 2,556,879 |
| | | |
| Finished and in-process tools and dies for | | |
| customers | | 821,724 |
| | | . 021,121 |
| Total Current Assets | | \$26,198,932 |
| | | 020,130,002 |
| | | |
| INVESTMENTS AND OTHER ASSETS | | |
| | | |
| Land contract receivable and miscellaneous | | |
| accounts | 5 76,498 | |
| Accounts receivable from employees | 2,913 | 79,411 |
| | | |

Murray Exhibit No. 13—Murray Annual Report for 1945

| • | | | | |
|--|---|-------------|--------|-------|
| PROPERTY, PLANT, AND EQUIPMI | ONT- at | | | |
| amounts, below cost, based on appra- | sals and . | | | |
| amounts, below cost, based on appra | a nout of | | | |
| estimates as of January 1, 1932, plu | s cost or | : | | |
| subsequent additions (including \$59: | 3,082 for | | | |
| emergency facilities), less reserves fe | or depre- | | | |
| ciation and amortization . | | | | |
| | | \$1,131,283 | | * |
| Land | | \$4,404,mo | | |
| Buildings and land improve- | | | | |
| ments \$ | 6,475,232 | | | |
| Machinery and equipment | 6,618,682 | | | |
| | y to the | | * | |
| *1 | 3,093,914 | | | 4. |
| | .,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,, | | | |
| Less reserves for depreciation | | | 3 | |
| and amortization (including | | | | |
| \$212.235 for emergency fa- | ¥ . | | | |
| cilities) | 6.839.079 | 6,254,835 | | |
| Cincies/ | | | | |
| | | | | |
| . Betterment and construction order | s in pro- | | | |
| cess | | 409,344 | | |
| | | | | |
| | 6 | \$7,795,464 | | |
| Real estate not used in operations- | held for | | | |
| | 110101 101 | 27,285 | 17 QX | 0 740 |
| sale | | 4,400 | . 1,02 | |
| And the second s | | | | |
| | | | | |

GOOD WILL

DEFERRED CHARGES

Prepaid taxes, insurance, and other expenses.

419,702

\$34,590,795

270 Murray Exhibit No. 13—Murray Annual Report for 1945

CURRENT LIABILITIES .

| · Accounts payable and accrued expenses: | 4.5 | |
|--|-----------------|--|
| Trade accounts and provision for renego- | | |
| tiation—Note C | \$3,881,032 | |
| Pay rolls | 1,006,203 | |
| Taxes withheld from pay rolls | 252,085 | |
| Employees' deposits for purchase of War- | 202,080 | |
| Savings Bonds | 78.864 | |
| Taxes, other than federal taxes on income | 448,965 | |
| Interest | 29,041 | 8 5 000 10 1 |
| | 21,1141 | \$ 5,696,199 |
| Federal taxes on income estimated | | 'en a mil a |
| Advance payments received from prime con- | | 784,084 |
| tractors on cost-plus-a-fixed-fee contracts | · 1. | :0 00 00 000 |
| traction on cost plus at fixed fee Contracts | . 49 | 8,087,806 |
| Total Current Liabilities | 4 4 . | \$14,518,080 |
| | • | |
| RESERVES | | |
| RESERVES | | |
| For employer's liability insurance | 3. 30,000 | |
| . For deferred costs of war production | 480,372 | 510,372 |
| . 4. | | |
| | | |
| | 3 | |
| CAPITAL STOCK AND SURPLUS | | 4 |
| Common stock, par value \$10.00 a share: | 27 | |
| Authorized 1,000,000 shares | | |
| Issued 970,452 shares | 59 704 590 | ٥ |
| Less in treasury 19,037 slares | 198,370 | |
| | 4.00,010 | - Tank |
| Outstanding 950,615 shares | 89,506,150 | |
| Surplus (restricted in the amount of \$198,370 | | |
| representing the par value of common stock | | |
| in treasury): | | |
| Capital surplus | 5,688,233 | -0 |
| Earned surplus since January 1, 1933 | - In the second | |
| No. 1 A P. V. | 4,367,960 | 19,562,343 |
| | | Total Section 1 |
| | * | - |
| | * | \$34,590,795 |
| 1.3 | | The state of the s |

| fol. 272 | MINUTE ENTRY OF ARGUMENT AND SUBMISSION —June 4, 1956 (omitted in printing).

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JUDGMENT-June 16, 1956

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the several judgments of the said District Court in this cause be and the same are hereby affirmed.

[fol, 274] [File endorsement omitted]

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

City of Detroit and County of WAYNE.
Appellants,

The Murray Corporation of America.

a Delaware corporation, Appellee.

and

UNITED STATES OF AMERICA, Intervenor.

No. 12678 :

Appeal from the United States District Court for the Eastern District, of Michigan,

Opinion-Decided June, 16, 1956.

Before ALLEN and MARTIN, Circuit Judges, and STARR, District Judge.

Martin, Circuit Judge. In three separate actions consolidated on this appeal, brought by The Murray Corpo-

ration of America in which the United States of America intervened, the District Court awarded summary judgments in favor of the plaintiff in the total amount of \$76,748.47 against the City of Detroit covering personal property taxes illegally collected in two installments for the year 1952 and for \$14,116.30 against the County of Wayne, Michigan, for personal property tax illegally collected.

The intervention of the United States was permitted for the reason that the Government claimed ownership of the personal property upon which the tax assessments were made by the City and the County respectively. Concededly, no genuine issue on any material fact was presented, and therefore summary judgment was the proper proceeding

for disposition of the issues of law involved.

[fol. 275] The assessment of more than \$2,000,000.00 in controversy was finade against The Murray Corporation of America on personal property in its possession under two letter sub-contracts respectively with "Kaiser" Corporation and "Wright" Corporation, each under and pursuant to letter prime contracts between the United States Government and Kaiser and Wright corporations respectively. These letter sub-contracts covered the manufacture of specified parts and assemblies required under the prime contracts for the United States Air Force for the national defense. These sub-contracts and amendments thereto were approved by a contracting officer of the United States Air Force in accordance with the requirements of the prime contract.

Included in these letter sub-contracts, by amendment, was a partial payment clause which, as stated by the District Judge, presents the nub of the present controversy. This clause in substance provided that upon the making of any partial payment, title to all parts, materials, inventories, work in process, and non-durable tools theretofore acquired or produced by the contractor for the performance of the contract and properly chargeable to the contract under sound accounting practices should forthwith rest in the Government; and title to all like property thereafter acquired or produced by the contractor for performance of the contract and properly chargeable as

aforementioned should vest in the Government forthwith

upon such acquisition or production.

The assessment date under Michigan law with which we are concerned was January 1, 1952. During 1951, the Murray Corporation upon its several requests; audited and approved by a contracting officer of the United States Air Force, received partial payments from Kaiser of more than \$163,000.00 and from Curtis Wright (successor to Wright Aeronautical Corporation) of more than \$510,5000.00.

In his clear-cut opinion, District Judge Thornton analysed the respective positions of the contending parties. The important points made by Murray were that the taxes assessed were ad valorem taxes upon property and not. privilege taxes assessed against the taxpayer; that properfy owned by the federal Government is immune from .. local ad valorem property taxes; that a federal question is presented for determination under federal and not under state law; that the partial payment clauses vesting title in the federal Government were fully authorized and effective; that under the partial payment clauses title to the [fol. 276] property in question was vested in the United States on the assessment date, and that this is an absolute and not a bare lien or securify title; that Murray is the real party in interest and so entitled to bring the actions; and that the equitable arguments advanced by the City and County have been entirely rejected by the Supreme Court of the United States.

The United States took substantially the same position and contends that the assessment was upon its property and therefore invalid under the federal Constitution.

The position of the City of Detroit was in effect that the partial payment and transfer of title clause was not authorized nor in conformity with federal statutes; that the inclusion of the clause would not defeat an ad valorem tax on personal property in the hands of an independent subcontractor acquired in the course of carrying out the provisions of a sub-contract for defense production; and that the course of action and dealing with the property was inconsistent with the vesting of absolute title in the United States and the Government therefore acquired merely a lien

or title for security purposes leaving Murray vested with an equitable title to the personal property subject to an ad calorem property tax.

The County of Wayne took the same position assumed by the City of Detroit with the added contention, which is clearly not meritorious, that the Murray Corporation is not

the real party in interest.

We agree with the finding of the District Court that the partial payment clauses are not invalid for want of authority or for non-conformity with the federal statutes. We concur also in the conclusion of the trial court that "a reading of the Partial Payment Clause leaves no doubt that, upon the making of a partial payment, title to parts, materials, etc., acquired for the performance of the contract vests in the United States Government as does title to all property subsequently acquired for the performance of the contract."

Among the numerous decisions of the Supreme Court of the United States upon the question of the immunity of Government property from state faxation we think United States v. County of Allegheny, 322 U.S. 174, is controlling authority in the instant case. In our judgment, the facts of that case are not in any material aspect distinguishable from the facts encountered here. In the Allegheny case, the United States made a contract with a machine company [fol. 277] in Pennsylvania for the manufacture of large field guns. The private corporation's plant though used for the manufacture of Meavy machinery was not equipped. for the manufacture of ordnance. It was agreed that certain additional machinery required for the work should be furnished at Government expense and should remain property of the United States. In performance of the agreement the contractor manufactured one machine, the Government furnished eight gun-boring lathes and the rest of the needed equipment was purchased by the contractor from other machine tool manufacturers. The machinery bought or built by the manufacturer was inspected and accepted on behalf of the United States which compensated the contractor therefor. The contract provided that the title to all such property should vest in the Government upon delivery at the site of work and upon inspection and acceptance. The

Government leased the equipment to the contractor during the period for which the gans were manufactured. The machinery was bolted on concrete foundations in the conto ctor's plant on real estate owned by it and could be removed without damage to the building. The Supreme Court of Pennsylvania upheld the assessment by Allegheny. County upon the ground that under the state law regardless of who held title to it, the machinery constituted a part of the contractor's mill for purposes of assessment and had been properly assessed as real estate. Both the contractor and the United States, which had intervened in the state litigation, appealed to the Supreme Court of the United States. That highest tribunal held that the substance of the procedure by the state assessors was to lay an ad valorem general property tax on property owned by the United States and that the Government-owned property, to the full extent of its interests therein, is immune from taxation, either as against the Government itself or as against one holding the property as bailee. The judgment of the state supreme court was reversed as violative of the federal Constitution.

Upon analysis, we think that substantially all of the arguments advanced by appellant were rejected by the Supreme Court in the Allegheny case. The Supreme Court declared that the principle is unshaken, indeed rarely questioned, that "possessions, institutions, and activities of the Federal Government itself in the absence of express congressional consent are not subject to any form of state taxation." 322 U. S. 177.

[fol. 278] In the earlier case of United States v. Ansonia Brass & Copper Company. 218 U. S. 452; the Supreme Court had held that vessels in course of construction for the United States, the title to which under the contract vests in the Government as fast as constructed, become instrumentalities of the Government and for reasons of public policy cannot be seized under state laws to answer private claims. In the later case of Kern-Limerick, Inc. v. Scurlock, 347 U. S. 110, the Supreme Court distinguished Alabama v. King & Boozer, 314 U. S. 1. upon the ground that under the contract involved in the Kern-Limerick case the United States was the real purchaser. The Arkansas

gross receipts tax law was held unconstitutional as applied to transactions whereby private contractors procured in Arkansas two tractors for use in constructing a naval ammunition depot for the United States under a cost-plus-fixed-fee contract entered into with the Navy Department which provided that in procuring needed articles, the contractor should act as purchasing agent for the Government, title to the articles purchased should pass directly from the vendor to the Government and the Government should be directly responsible to the vendor for payment of the

purchase price.

We think that reliance of the City of Detroit upon the following cited authorities is not well placed: Esso Standard Oil Co. v. Evans, 345 V. S. 495; James v. Bravo Contracting Co., 302 U. S. 134; Graves v. New Fork, 306 U. S. 466; and Helvering v. Mountain Producers Corporation, 303 U. S. 376. All of these cases involve(excise or privilege taxes, where a privilege exercised by the contractor was taxed to him although the economic burden was passed along by him to the Government. The incidence of the privilege taxes was upon the contractor while in the case at bar an advalorem property tax had been assessed upon property the title to which is vested in the United States and the incidence of the tax is directly and solely upon the property assessed.

In the Esso Standard Oil Company case the Government had agreed to assume liability of all estate taxes in connection with a storage contract made by it with a private corporation. The Allegheny County case was thus distinguished: "Allegheny County, however, was quite different. The United States had leased certain machinery to the Mesta Machine Company. In imposing the state ad valorem property tax; Pennsylvania included in the Mesta assessment both the privately owned land and buildings. [fol. 279] and the government machinery. . . . So the value of the federal property was, in part, the measure of the tax. We held the substance of this procedure was 'to lay an ad valorem general property tax on property owned by the United States,' . . . and therefore invalid. Our holding was not dependent upon the ultimate resting place of the economic burden of the tax.

"This tax was imposed because Esso stored gasoline. It is not, as the Allegheny County tax was, based on the worth of the government property. Instead, the amount collected is graduated in accordance with the exercise of Esso's privilege to engage in such operations; so it is not 'on' the federal property as was Pennsylvania's." 345 U. S. 499.

In our judgment S. R. A., Inc. v. Minnesota, 327 U. S. 558, is not apposite for the reason that in that case the contract involved transferred the equity in the land to the purchaser, leaving in the United States only a ligal title as security, rendering it the equivalent of a mortgage. The opinion pointed out that no state has power to tax property of the United States against its will; and stated that "under an implied constitutional immunity, its property and operations must be exempt from state control in tax as in other matters." M'Culloch v. Maryland, 4 Wheaton 316, 425; VanBrocklin v. Tennessee, 117 U. S. 151, 177, and United States v. Allegheny County, 322 U. S. 174, 176-177; were cited.

The several judgments of the District Court from which the 'appeals were taken in the instant controversy are affirmed.

[fol. 280] IN UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ORDER STAYING MANDATE-July 13, 1956

Ordered, That motion to stay mandate herein pending application to the Supreme Court for writ of certiorari is hereby granted and the mandate is stayed for thirty days from this date; provided that, if within such thirty days, the applicant shall file with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition, record, and brief have been filed, the stay shall continue until the final disposition of the case by the Supreme Court. Unless this condition is complied with within such thirt, days or any extension thereof made by the Court or any judge thereof, or if the condition is complied with, then upon the filing of copy of an order denying the writ applied for, the mandate shall issue.

[101. 281] IN UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ORDER EXTENDING STAY OF MANDATE-August 10, 1956

Ordered, That motion for extension of Stay of Mandate pending further proceedings in connection with appeal to the Supreme Court is hereby granted and the mandate in the above entitled cause is stayed for thirty days from this date; provided that, if within such thirty days, the appellant shall file with the Clerk of this Court the Certificate of the Clerk of the Supreme Court that said case has been docketed, and the Record filed together with the Jurisdictional Statement in one of the cases involved in the above consolidated appeal, the Stay shall continue until the final disposition of the case by the Supreme Court. Unless this condition is complied with within such thirty days or any extension thereof made by the Court or any Judge thereof, the Mandate shall issue.

[fol. 283] [File endorsement omitted]

[fol: 284] In the United States Court of Appeals for the Sixth Circuit

City of Detroit, a Michigan Municipal Corporation, Appellant,

THE MURRAY CORPORATION OF AMERICA, a Delaware Corporation, Appellee,

UNITED STATES OF AMERICA, Intervenor.

Case No. 12678

Appeal from the United States District Court for the Eastern District of Michigan.

NOTICE OF APPEAL BY CITY OF DETROIT TO THE SUPREME COURT OF THE UNITED STATES—Filed July 25, 1956

1.

Notice is hereby given that City of Detroit, a Michigan Municipal Corporation, defendant and appellant above

named, hereby appeals to the Supreme Court of the United-States from the judgment of the Circuit Court of Appeals, Sixth Circuit, in the within action on June 16, 1956, affirming judgment against it for plaintiff and appellee, Murray Corporation of America; in the District Court for the Eastern District of Michigan for the sum of thirty-eight thousand seven hundred thirty-three and 97/100 (\$38,783-97) dollars.

This appeal is taken pursuant to 28 U.S.C.A. 1254 (2)

II.

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. Joint Appendix

2. Judgment (June 16, 1956)

3. Opinica (June 16, 1956)

4. Order Staying Mandate (July 13, 1956)

5. Notice of Appeal

[fel. 285] .

III.

The following questions are presented by this appeal:

- 1. Did United States contract procurement officers have authority under federal law to provide for transfer of title to the United States of materials in the possession of appellee (an independent subcontractor under Federal Government prime contracts), upon appellee's receipt of partial payment therefor from its prime contractors, thereby causing invalidation of state and local taxing statutes and non-discriminatory ad valorem personal property taxes levied thereunder against appellee upon such materials as repugnant to the implied constitutional immunity of the United States?
- 2. If inclusion of transfer of title provisions in federal contracts was authorized by federal statutes,—were the undisputed facts and course of conduct between the contracting parties nevertheless inconsistent with claim of absolute title in the Government of materials acquired or

being processed by appellec, creating, instead, paper title for security purposes which would not invalidate state and local statutes or non-discriminatory ad valorem personal property taxes levied thereunder as repugnant to such implied constitutional immunity of the Federal Government?

3. If inclusion of such partial payment-title passage provisions was authorized by federal statutes and vested absolute and not paper or security title to such materials in the Federal Government,—then were state and local statutes and non-discriminatory ad valorem taxes levied thereunder (the incidence of which was not against the Government and for which appellee alone is liable for payment and collection) nevertheless valid as imposing no direct burden [fol. 286] upon the Federal Government in violation of its implied constitutional immunity?

City of Detroit, a Michigan Municipal Corporation, Defendant and Appellant

/s/ Paul T. Dwyer, Corporation Counsel.

Bert R. Sogge, Vance O. Ingalls, Julius C. Pliskow, /s/G. Edwin Slater, Assistants Corporation Counsel, Attorneys for Defendant and Appellant, 1010 City-County Building, 400 Woodward Avenue, Detroit 26, Michigan.

Dated: July 24, 1956.

[fol. 287] Acknowledgment of Service (omitted in printing).

[fol. 288] Proof of Service (omitted in printing).

[fol. 289]

[File endorsement omitted]

[fol. 290] In the United States Court of Appeals for the Sixth Circuit

COUNTY OF WAYNE, a Michigan constitutional body corporate, Appellant,

v

The Murray Corporation of America, a Delaware Corporation, Appellee,

and

UNITED STATES OF AMERICA, Intervenor.

Case No. 12678

Appeal from the United States District Court for the Eastern District of Michigan.

NOTICE OF APPEAL BY COUNTY OF WAYNE TO THE SUPREME COURT OF THE UNITED STATES—Filed July 25, 1956

I

Notice is hereby given that County of Wayne, a Michigan constitutional body corporate, defendant and appellant above named, hereby appeals to the Supreme Court of the United States from the judgment of the Circuit Court of Appeals, Sixth Circuit, in the within action on June 16, 1956, affirming judgment against it for plaintiff and appellee, The Murray Corporation of America, in the District Court for the Eastern District of Michigan for the sum of Fourteen Thousand One Hundred Sixteen and 30/100 (\$14,116.30) dollars.

This appeal is taken purs ant to 28 U.S. C. A. 1254 (2).

H.

The clerk will please prepare a transcript of the record in this cause for transmission to the clerk of the Supreme Court of the United States and include in said transcript the following:

1. Joint Appendix

2. Judgment (June 16, 1956)

.3. Opinion (June 16, 1946)

4. Order Staying Mandate (July 13, 1956)

5. Notice of Appeal

The following questions are presented by this appeal:

1. Did United States contract procurement officers have authority under Federal law to provide for transfer of title to the United States of materials in the possession of appellee (an independent sub-contractor under Federal government prime contracts) upon appellee's receipt of partial payment therefor from its prime contractors, thereby causing invalidation of state and local taxing statutes and non-discriminatory ad valorem personal property taxes levied thereunder against appellee upon such materials as repugnant to the implied constitutional immunity of the United States?

2. If inclusion of transfer of title provisions in Federal contracts was authorized by Federal statutes; were the undisputed facts and course of conduct between the contracting parties nevertheless inconsistent with claim of absolute title in the government of materials acquired for processing by appellee, creating instead paper title for security purposes which would not invalidate state and local statutes or non-discriminatory ad valorem personal property taxes levied thereunder as repugnant to the implied constitutional immunity of the Federal government?

3. If inclusion of such partial payment-title passage provisions was authorized by Federal statutes and vested absolute and not paper or security title to such materials in the Federal government, then were state and local statutes and non-discriminatory ad valorem taxes levied thereunder (the incidence of which was not against the government and for which appellee alone is liable for payment and [fol. 292] collection) nevertheless valid as imposing no direct burden upon the Federal government in violation of its implied constitutional immunity?

Dated: July 24, 1956

County of Wayne, a Michigan constitutional body corporate.

Gerâld K. O'Brien, Prosecuting Attorney.

Hobart Taylor, Jr., and Thomas J. Foley, Assistant Prosecuting Attorneys, Attorneys for Defendant and Appellant County of Wayne, and /s/ Albert E. Champney, of Counsel. By /s/ Thomas J. Foley, Assistant Prosecuting Attorney, 601 City-County Building, Detroit 26, Michigan, WO. 5-2750, Ext. 271.

[fol. 293] Acknowledgment of Service (omitted in printing).

[fol. 294] Proof of Service (omitted in printing).

[fol. 295] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 296] Supreme Court of the United States
No., October Term, 1956

CITY OF DETROIT ET AL, Petitioners,

V.

THE MURRAY CORPORATION OF AMERICA.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including November 13th, 1356.

Stanley Reed, Associate Justice of the Supreme Court of the United States.

Received Sept. 14, 1956.

Dated this 15th day of September, 1956.

See Bradford Electric Light Co. v. Claffer Admx 284/221.

[fol. 298] Supreme Court of the United States No. 563, October Term, 1956

CTTY OF DETROIT, a Michigan Municipal Corporation; et al., Petitioners

THE MURRAY CORPORATION OF AMERICA, a Delaware Corporation, et al.

ORDER ALLOWING CERTIORARI-Filed January 14, 1957

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted. The case is consolidated with Nos. 401, 487, and 564 (and 565) and a total of three hours allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 300] Supreme Court of the United States
No. 401, October Term, 1956

CITY OF DETROIT, a Michigan Municipal Corporation, et al., Appellants,

V.

THE MURRAY CORPORATION OF AMERICA, a Delaware Corporation, et al.

APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER POSTPONING JURISDICTION—January 14, 1957

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits. The case is consolidated with Nos. 487, 564 (and 565) and 563 and a total of three hours allowed for oral argument.